

Senators Wergin, Ruud, Jungbauer and Larson introduced-  
S.F. No. 2432: Referred to the Committee on Judiciary.

A bill for an act  
relating to real property; eminent domain; defining public use; proposing coding  
for new law in Minnesota Statutes, chapter 117.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. [117.012] PUBLIC USE.

(a) No body, public or private, having the power of eminent domain under this  
chapter or any other provision of law, shall exercise the power of eminent domain unless  
the taking of the property is necessary for a public use.

(b) For purposes of this section, "public use" is limited to:

(1) the possession, occupation, or enjoyment of the taken property by the general  
public or a public body;

(2) the acquisition of an interest in property by a public service corporation or  
common carrier that is essential to the performance of the duties, function, or purpose of  
the public service corporation or common carrier; or

(3) the acquisition of property by a public body necessary to protect the public  
health or safety.

(c) Property or an interest in property acquired by eminent domain may not be  
transferred or conveyed to a private person, or for a use that is not a public use.

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and Fiscal Analysis**

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# Senate

State of Minnesota

TO: Senator Don Betzold

FROM: Kathleen Pontius, Senate Counsel (651/296-4394) *K.P.*

DATE: March 9, 2006

RE: Summary of Eminent Domain Amendment (SCS2750A-8)

Here is a summary of the delete-everything amendment to **S.F. No. 2750**, Senator Bakk's Eminent Domain bill. It incorporates provisions from **S.F. No. 2750** and **S.F. No. 2694**.

**Section 1** amends the statute dealing with appraisal and negotiation requirements applicable to acquisition of property for transportation purposes to expand it to include all eminent domain proceedings. Amendments are included with respect to the exchange of appraisals and the applicable time periods. The current \$1,500 cap on owner appraisals would be applicable to single-family and two-family residential property, agricultural property, and minimum damage acquisitions, but for other types of property the cap is increased to \$5,000. In addition, 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. This is from **S.F. No. 2694, section 1**.

**Section 2** adds new requirements relating to local government public hearings before commencing eminent domain proceedings.

**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 an eminent domain proceeding, a public hearing must be held. Notice requirements are specified. In addition, interested persons must be allowed reasonable time to present 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 local government or local government agency to use eminent domain to acquire the property at its next regular meeting that is at least 30 days after the public hearing.

This section is based on **S.F. No. 2750, section 10**, with minor technical changes.

**Section 3** 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. This is based on **S.F. No. 2694, section 2**.

**Section 4** contains requirements for the appeal of an order challenging the public purpose, necessity, or authority for a taking. This is from **S.F. No. 2694, section 3**.

**Section 5** requires the court to award reasonable attorney fees in cases where the court determines that a taking is not for a public purpose or is unlawful. This is from **S.F. No. 2694, section 4**, except the award of attorney fees in these cases would be mandatory.

**Section 6** increases the appraisal fees that may be awarded, consistent with the raise in the caps under **section 1**. This is from **S.F. No. 2694, section 5**.

**Section 7** contains new language 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. It is applicable if the owner establishes that the business or trade has been destroyed as a direct result of the taking; the loss cannot be reasonably prevented by relocating the business or trade; and compensation for the loss will not duplicate compensation otherwise awarded to the owner.

**Subdivision 3** specifies the procedure for seeking compensation for loss of a going concern. The court must determine whether a going concern has been taken (this is consistent with current case law). If the court determines that there is a taking, damages must be determined by the commissioners and must be reported as a separate award. An award for a loss of going concern may be appealed in accordance with **section 117.145**, which is the current law dealing with appeals of commissioners’ awards.

**S.F. No. 2750, section 6**, contains similar operative language but provides that the owner must be compensated unless the condemning authority establishes a disqualifying factor by clear and convincing evidence.

**Section 8** contains an exception from the attorney fee and going concern provisions for public service corporations. This is similar to **S.F. No. 2750, section 9**.

**Sections 9 to 11** 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). This is from S.F. No. 2694, sections 7 to 9.

**Sections 12 and 13** amend notice requirements and appeals for eminent domain proceedings by the Department of Transportation, consistent with the changes made in **section 3**. This is from S.F. No. 2694, sections 10 and 11.

**Section 14** strikes language dealing with public hearing requirements under chapter 469, consistent with the new language that would apply to all local government eminent domain proceedings under **section 2**. This is based on S.F. No. 2694, **section 12** and S.F. No. 2750, **section 10**.

**Section 15** contains the definitions that are applicable to **section 16**, which contains limitations on the use of eminent domain under **chapter 469** in cases where property will be transferred to a person or nongovernment entity without the power of eminent domain.

**Section 16** contains the limitations on the use of eminent domain for property that is going to be transferred to a person or nongovernment entity without the power of eminent domain.

**Subdivision 1** contains the general limitation.

**Subdivision 2** contains exceptions and specifies purposes for which the power of eminent domain may be exercised under **chapter 469** even though the property will be transferred to a private person. Note that **clause (6)** addresses the “strip taking” problem in cases where only a small parcel of land is needed to complete a project. **Clause (7)**, combined with **paragraph (b)**, outlines the circumstances under which economic development is a proper purpose. In general, it is tied to situations where various forms of public financial assistance are present.

**Subdivision 3** requires applicants for financial assistance described in **subdivision 2, paragraph (b)**, to indicate on applications whether the use of eminent domain may be necessary to acquire property for the project.

This section is based on S.F. No. 2694, **section 15**.

**Section 17** instructs the Revisor to change the phrase “right of eminent domain” to “power of eminent domain” where found in Minnesota Statutes and Rules. This is from S.F. No. 2750, **section 11**.

**Section 18** contains the effective date. Except as otherwise provided, this act would be effective January 1, 2007, and apply to condemnation proceedings commenced on or after that date.

For purposes of this amendment, none of the sections have special effective dates.

KP:cs

Senators Betzold, Belanger and Pogemiller introduced—

S.F. No. 2694: Referred to the Committee on Judiciary.

1.1 A bill for an act  
 1.2 relating to eminent domain; providing for and regulating the use of eminent  
 1.3 domain; providing for notice, hearing, appeal, and other procedural requirements;  
 1.4 allowing attorney fees under certain conditions; providing for a right of first  
 1.5 refusal; providing definitions; making clarifying, conforming, and technical  
 1.6 changes; amending Minnesota Statutes 2004, sections 117.036; 117.055;  
 1.7 117.075, by adding subdivisions; 117.085; 117.51; 117.52, subdivision 1, by  
 1.8 adding a subdivision; 163.12, subdivisions 1a, 1b; 469.012, subdivision 1g;  
 1.9 proposing coding for new law in Minnesota Statutes, chapters 117; 469.

1.10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.11 Section 1. Minnesota Statutes 2004, section 117.036, is amended to read:

1.12 **117.036 APPRAISAL AND NEGOTIATION REQUIREMENTS**

1.13 ~~APPLICABLE TO ACQUISITION OF PROPERTY FOR TRANSPORTATION~~  
 1.14 ~~PURPOSES.~~

1.15 Subdivision 1. **Application.** This section applies to the acquisition of property  
 1.16 ~~for public highways, streets, roads, alleys, airports, mass transit facilities, or for other~~  
 1.17 ~~transportation facilities or purposes~~ under this chapter.

1.18 Subd. 2. **Appraisal.** (a) Before commencing an eminent domain proceeding under  
 1.19 this chapter, the acquiring authority must obtain at least one appraisal for the property  
 1.20 proposed to be acquired. In making the appraisal, the appraiser must confer with one or  
 1.21 more of the fee owners or contract purchasers of the property, if reasonably possible.  
 1.22 ~~At least~~ Notwithstanding section 13.44 or any other law to the contrary, the acquiring  
 1.23 authority must provide the fee owner or contract purchaser with a copy of the appraisal  
 1.24 at the time an offer is made, but no later than 20 days before presenting a petition under  
 1.25 ~~section 117.055, the acquiring authority must provide the owner with a copy of the~~  
 1.26 ~~appraisal and inform the owner of the owner's~~ fee owner or contract purchaser of the right

2.1 to obtain an appraisal under this section. Upon request, the acquiring authority must make  
 2.2 available to the fee owner or contract purchaser all appraisals of the property.

2.3 (b) The fee owner or contract purchaser may obtain an appraisal by a qualified  
 2.4 appraiser of the property proposed to be acquired. The fee owner or contract purchaser  
 2.5 is entitled to reimbursement for the reasonable costs of the appraisal from the acquiring  
 2.6 authority up to a maximum of \$1,500 within 30 days after the for single family and  
 2.7 two-family residential property, agricultural property, and minimum damage acquisitions  
 2.8 and \$5,000 for other types of property, provided that the fee owner or contract purchaser  
 2.9 submits to the acquiring authority the information necessary for reimbursement, provided  
 2.10 that the owner does so including a copy of the fee owner's or contract purchaser's  
 2.11 appraisal, within 60 90 days after the owner receives receiving the appraisal from the  
 2.12 authority under paragraph (a) and at least 30 days before a condemnation commissioners'  
 2.13 hearing. For purposes of this paragraph, a "minimum damage acquisition" means an  
 2.14 interest in property that a qualified person with appraisal knowledge indicates can be  
 2.15 acquired for a cost of \$10,000 or less. For purposes of this paragraph, "agricultural  
 2.16 property" has the meaning given in section 583.22, subdivision 2.

2.17 (c) The acquiring authority must pay the reimbursement to the fee owner or contract  
 2.18 purchaser within 30 days after receiving a copy of the appraisal and the reimbursement  
 2.19 information. Upon agreement between the acquiring authority and either the fee owner  
 2.20 or contract purchaser, the acquiring authority may pay the reimbursement directly to  
 2.21 the appraiser.

2.22 **Subd. 3. Negotiation.** In addition to the appraisal requirements under subdivision 2,  
 2.23 before commencing an eminent domain proceeding, the acquiring authority must make a  
 2.24 good faith attempt to negotiate personally with the fee owner or contract purchaser of the  
 2.25 property in order to acquire the property by direct purchase instead of the use of eminent  
 2.26 domain proceedings. In making this negotiation, the acquiring authority must consider  
 2.27 the appraisals in its possession, including any appraisal obtained and furnished by the fee  
 2.28 owner or contract purchaser if available, and other information that may be relevant to a  
 2.29 determination of damages under this chapter.

2.30 **Subd. 4. Condemnation commissioners' hearing.** Notwithstanding section 13.44,  
 2.31 an appraisal must not be used or considered in a condemnation commissioners' hearing,  
 2.32 nor may the appraiser who prepared the appraisal testify, unless a copy of the appraiser's  
 2.33 written report is provided to the opposing party at least five days before the hearing.

2.34 Sec. 2. Minnesota Statutes 2004, section 117.055, is amended to read:

2.35 **117.055 PETITION AND NOTICE.**

3.1 Subdivision 1. Petition. In all cases a petition, describing the desired land, stating by  
 3.2 whom and for what purposes it is proposed to be taken, and giving the names of all persons  
 3.3 appearing of record or known to the petitioner to be the owners thereof shall be presented  
 3.4 to the district court of the county in which the land is situated praying for the appointment  
 3.5 of commissioners to appraise the damages which may be occasioned by such taking.

3.6 Subd. 2. Notice. (a) Notice of the objects of the petition and of the time and place of  
 3.7 presenting the same shall be served at least 20 days before such time of presentation upon  
 3.8 all persons named in the petition as owners as defined in section 117.025, subdivision 3,  
 3.9 and upon all occupants of such land in the same manner as a summons in a civil action.

3.10 (b) The notice must state that: (1) a party wishing to challenge the public purpose,  
 3.11 necessity, or authority for a taking must appear at the court hearing and state the objection;  
 3.12 (2) failure to appear and object is deemed a waiver of any objection; and (3) a court order  
 3.13 approving the public purpose, necessity, and authority for the taking is final unless an  
 3.14 appeal is brought within 60 days after service of the order on the party.

3.15 (c) If any such owner be not a resident of the state, or the owner's place of residence  
 3.16 be unknown to the petitioner, upon the filing of an affidavit of the petitioner or the  
 3.17 petitioner's agent or attorney, stating that the petitioner believes that such owner is not  
 3.18 a resident of the state, and that the petitioner has mailed a copy of the notice to the  
 3.19 owner at the owner's place of residence, or that after diligent inquiry the owner's place  
 3.20 of residence cannot be ascertained by the affiant, then service may be made upon such  
 3.21 owner by three weeks' published notice. If the state be an owner, the notice shall be  
 3.22 served upon the attorney general. Any owner not served as herein provided shall not be  
 3.23 bound by such proceeding except upon voluntarily appearing therein. Any owner shall  
 3.24 be furnished a right-of-way map or plat of all that part of land to be taken upon written  
 3.25 demand, provided that the petitioner shall have ten days from the receipt of the demand  
 3.26 within which to furnish the same. Any plans or profiles which the petitioner has shall be  
 3.27 made available to the owner for inspection.

3.28 Sec. 3. Minnesota Statutes 2004, section 117.075, is amended by adding a subdivision  
 3.29 to read:

3.30 Subd. 1a. Appeal of order. A party wishing to challenge the public purpose,  
 3.31 necessity, or authority for a taking must appear at the court hearing required by subdivision  
 3.32 1 and state the objection. Failure to appear and object is deemed a waiver of any objection.  
 3.33 A court order approving the public purpose, necessity, and authority for the taking is final  
 3.34 unless an appeal is brought within 60 days after service of the order on the party.

4.1 Sec. 4. Minnesota Statutes 2004, section 117.075, is amended by adding a subdivision  
4.2 to read:

4.3 Subd. 1b. Attorney fees. If the court determines that a taking is not for a public  
4.4 purpose or is unlawful, the court may award the owner reasonable attorney fees.

4.5 Sec. 5. Minnesota Statutes 2004, section 117.085, is amended to read:

4.6 **117.085 COMMISSIONERS, POWERS, DUTIES.**

4.7 The commissioners, having been duly sworn and qualified according to law, shall  
4.8 meet as directed by the order of appointment and hear the allegations and proofs of all  
4.9 persons interested touching the matters to them committed. They may adjourn from time  
4.10 to time and from place to place within the county, giving oral notice to those present of  
4.11 the time and place of their next meeting. All testimony taken by them shall be given  
4.12 publicly, under oath, and in their presence. They shall view the premises, and any of  
4.13 them may subpoena witnesses, which shall be served as subpoenas in civil actions are  
4.14 served, and at the cost of the parties applying therefor. If deemed necessary, they may  
4.15 require the petitioner or owner to furnish for their use maps, plats, and other information  
4.16 which the petitioner or owner may have showing the nature, character, and extent of the  
4.17 proposed undertaking and the situation of lands desired therefor. In proper cases they may  
4.18 reserve to the owner a right-of-way or other privilege in or over the land taken, or attach  
4.19 reasonable conditions to such taking in addition to the damages given or they may make  
4.20 an alternative award, conditioned upon the granting or withholding of the right specified.  
4.21 Without unreasonable delay they shall make a separate assessment and award of the  
4.22 damages which in their judgment will result to each of the owners of the land by reason  
4.23 of such taking and report the same to the court. The commissioners shall not reduce the  
4.24 amount of the damages awarded because the land being taken is, at the time of the taking,  
4.25 valued under section 273.111, designated as an agricultural preserve under chapter 473H.  
4.26 The commissioners, in all such proceedings, may in their discretion allow and show  
4.27 separately in addition to the award of damages, reasonable appraisal fees not to exceed a  
4.28 total of ~~\$500~~ \$1,500 for single family and two-family residential property, agricultural  
4.29 property, and minimum damage acquisitions and \$5,000 for other types of property. Upon  
4.30 request of an owner the commissioners shall show in their report the amount of the award  
4.31 of damages which is to reimburse the owner and tenant or lessee for the value of the land  
4.32 taken, and the amount of the award of damages, if any, which is to reimburse the owner  
4.33 and tenant or lessee for damages to the remainder involved, whether or not described in  
4.34 the petition. The amounts awarded to each person shall also be shown separately. The  
4.35 commissioners shall, if requested by any party, make an express finding of the estimated



5.1 cost of removal and remedial actions that will be necessary on the taken property because  
5.2 of existing environmental contamination.

5.3 **Sec. 6. [117.226] RIGHT OF FIRST REFUSAL.**

5.4 (a) If the governing body of the acquiring authority determines that publicly owned  
5.5 property acquired under this chapter has not been used and is no longer needed for the  
5.6 purpose for which it was originally acquired, the authority must offer to sell the property  
5.7 to the owner from whom it was acquired. If the former owner can be located, the acquiring  
5.8 authority must offer to sell the property at the current fair market value of the property. If  
5.9 the current fair market value is less than what the acquiring authority paid for the property,  
5.10 the acquiring authority must offer to sell the property for the amount that the acquiring  
5.11 authority paid when it originally acquired the property.

5.12 (b) The acquiring authority must attempt to locate the former owner by:

5.13 (1) sending notice of the right of first refusal by first class mail to the last known  
5.14 address of the former owner; and

5.15 (2) providing two weeks' published notice of the right of first refusal in a newspaper  
5.16 of general circulation.

5.17 (c) If the former owner cannot be located or declines to repurchase the property  
5.18 within 60 days of providing the notice described in paragraph (b), the acquiring authority  
5.19 shall prepare a certificate attesting to the same and record the certificate in the office of the  
5.20 county recorder or county registrar of titles, as appropriate, to evidence the termination of  
5.21 the right of first refusal.

5.22 (d) This section shall not apply:

5.23 (1) if the acquiring authority has an alternative use for the property and the property  
5.24 would remain in public ownership; or

5.25 (2) to acquisitions of property for transportation purposes made by the commissioner  
5.26 of transportation.

5.27 **Sec. 7. Minnesota Statutes 2004, section 117.51, is amended to read:**

5.28 **117.51 COOPERATION WITH FEDERAL AUTHORITIES.**

5.29 In all acquisitions undertaken by any acquiring authority and in all voluntary  
5.30 rehabilitation carried out by a person pursuant to acquisition or as a consequence thereof,  
5.31 the acquiring authority shall cooperate to the fullest extent with federal departments and  
5.32 agencies, and it shall take all necessary action in order to insure, to the maximum extent  
5.33 possible, federal financial participation in any and all phases of acquisition, including the  
5.34 provision of relocation assistance, services, payments and benefits to displaced persons.

6.1 ~~An acquiring authority may consider reimbursing up to \$50,000 in reestablishment~~  
6.2 ~~expenses of a displaced business.~~

6.3 Sec. 8. Minnesota Statutes 2004, section 117.52, subdivision 1, is amended to read:

6.4 Subdivision 1. **Lack of federal funding.** In all acquisitions undertaken by any  
6.5 acquiring authority and in all voluntary rehabilitation carried out by a person pursuant  
6.6 to acquisition or as a consequence thereof, in which, due to the lack of federal financial  
6.7 participation, relocation assistance, services, payments and benefits under the Uniform  
6.8 Relocation Assistance and Real Property Acquisition Policies Act of 1970, United States  
6.9 Code, title 42, sections 4601 to 4655, as amended by the Surface Transportation and  
6.10 Uniform Relocation Assistance Act of 1987, Statutes at Large, volume 101, pages 246  
6.11 to 256 (1987), are not available, the acquiring authority, as a cost of acquisition, shall  
6.12 provide all relocation assistance, services, payments and benefits required by the Uniform  
6.13 Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended by  
6.14 the Surface Transportation and Uniform Relocation Assistance Act of 1987, and those  
6.15 regulations adopted pursuant thereto, and either (1) in effect as of ~~July 1, 1988~~ January 1,  
6.16 2006, or (2) becoming effective after ~~July 1, 1988~~ January 1, 2006, following a public  
6.17 hearing and comment. Comments received by an acquiring authority within 30 days after  
6.18 the public hearing must be reviewed and a written response provided to the individual or  
6.19 organization who initiated the comment. The response and comments may be addressed in  
6.20 another public hearing by the acquiring authority before approval.

6.21 Sec. 9. Minnesota Statutes 2004, section 117.52, is amended by adding a subdivision to  
6.22 read:

6.23 Subd. 1a. **Reestablishment costs limit.** For purposes of relocation benefits paid in  
6.24 accordance with this section, the limitation in Code of Federal Regulations, title 49, section  
6.25 24.304, with respect to reimbursement of reestablishment expenses for nonresidential  
6.26 moves, an acquiring authority shall reimburse up to \$50,000 for such expenses.

6.27 Sec. 10. Minnesota Statutes 2004, section 163.12, subdivision 1a, is amended to read:

6.28 Subd. 1a. **Petition, notice, and access to information.** (a) Upon passage of the  
6.29 resolution specified in section 163.11, subdivision 2, a petition must be presented to the  
6.30 district court of the county in which the land is located. The petition must describe each  
6.31 tract of land through which the highway passes, state the purposes for which the land is  
6.32 proposed to be taken, and list the names of all persons appearing of record or known to  
6.33 the county to be the landowners.

7.1 (b) Notice of the objects of the petition and of the time and place of presenting the  
7.2 notice must be served, together with a copy of the resolution, upon each occupant of  
7.3 each tract of land through which the highway passes at least 20 days before the hearing  
7.4 under subdivision 1b. If an owner is not a resident of the state, or the owner's place of  
7.5 residence is unknown to the county, service may be made by three weeks' published  
7.6 notice following the filing of an affidavit on behalf of the county by the county's agent or  
7.7 attorney stating that the county:

7.8 (1) believes that the owner is not a resident of the state; and

7.9 (2) has either mailed a copy of the notice to the owner at the owner's last known  
7.10 residence address or, after diligent inquiry, the owner's place of residence cannot be  
7.11 ascertained by the county.

7.12 If the state is an owner, the notice must be served upon the attorney general. An owner  
7.13 not served as provided in this subdivision is not bound by the proceeding, except if the  
7.14 owner voluntarily appears in the proceeding.

7.15 (c) Within ten days of an owner's demand, the owner must be furnished a  
7.16 right-of-way map or plat of all that part of the owner's land to be taken. Any applicable  
7.17 plans or profiles that the county possesses must be made available to the owner for  
7.18 inspection.

7.19 (d) The notice must state that: (1) a party wishing to challenge the public purpose,  
7.20 necessity, or authority for the taking must appear at the court hearing and state the  
7.21 objection; (2) failure to appear and object is deemed a waiver of any objection; and (3) a  
7.22 court order approving the public purpose, necessity, and authority for the taking is final  
7.23 unless an appeal is brought within 60 days after service of the order on the party.

7.24 Sec. 11. Minnesota Statutes 2004, section 163.12, subdivision 1b, is amended to read:

7.25 Subd. 1b. **Finding of necessity.** When proof of service of the notice required in  
7.26 subdivision 1a is filed with the court, the court shall hear all competent evidence offered  
7.27 for or against granting the petition at the time and place fixed in the notice or otherwise set  
7.28 by the court. On finding that the proposed taking is necessary and authorized by law the  
7.29 court shall order the proceedings to commence pursuant to the remaining provisions of  
7.30 this section. The court order finding the taking necessary and authorized by law is a final  
7.31 order and must be appealed within 60 days from its service on the party.

7.32 Sec. 12. Minnesota Statutes 2004, section 469.012, subdivision 1g, is amended to read:

7.33 Subd. 1g. **Get property; eminent domain.** (a) An authority may, within its area of  
7.34 operation, acquire real or personal property or any interest therein by gifts, grant, purchase,

8.1 exchange, lease, transfer, bequest, devise, or otherwise, and by the exercise of the power  
 8.2 of eminent domain, in the manner provided by chapter 117, acquire real property which it  
 8.3 may deem necessary for its purposes, after the adoption by it of a resolution declaring that  
 8.4 the acquisition of the real property is necessary:

8.5 (1) to eliminate one or more of the conditions found to exist in the resolution adopted  
 8.6 pursuant to section 469.003 or to provide decent, safe, and sanitary housing for persons  
 8.7 of low and moderate income; or

8.8 (2) to carry out a redevelopment project.

8.9 (b) Real property needed or convenient for a project may be acquired by the  
 8.10 authority for the project by condemnation pursuant to this section and section 469.401.

8.11 ~~(c) Prior to adoption of a resolution authorizing acquisition of property by~~  
 8.12 ~~condemnation, the governing body of the authority must hold a public hearing on the~~  
 8.13 ~~proposed acquisition after published notice in a newspaper of general circulation in the~~  
 8.14 ~~municipality, which must be made at least one time not less than ten days nor more than~~  
 8.15 ~~30 days prior to the date of the hearing. The notice must reasonably describe the property~~  
 8.16 ~~to be acquired and state that the purpose of the hearing is to consider acquisition by~~  
 8.17 ~~exercise of the authority's powers of eminent domain. Not less than ten days before the~~  
 8.18 ~~hearing, notice of the hearing must also be mailed to the owner of each parcel proposed~~  
 8.19 ~~to be acquired, but failure to give mailed notice or any defects in the notice does not~~  
 8.20 ~~invalidate the acquisition. For the purpose of giving mailed notice, owners are determined~~  
 8.21 ~~in accordance with section 429.031, subdivision 1, paragraph (a).~~

8.22 ~~(d)~~ (c) Property acquired by condemnation under this section may include any  
 8.23 property devoted to a public use, whether or not held in trust, notwithstanding that the  
 8.24 property may have been previously acquired by condemnation or is owned by a public  
 8.25 utility corporation, because the public use in conformity with the provisions of sections  
 8.26 469.001 to 469.047 shall be deemed a superior public use. Property devoted to a public  
 8.27 use may be so acquired only if the governing body of the municipality has approved  
 8.28 its acquisition by the authority.

8.29 ~~(e)~~ (d) An award of compensation shall not be increased by reason of any increase  
 8.30 in the value of the real property caused by the assembly, clearance or reconstruction, or  
 8.31 proposed assembly, clearance or reconstruction for the purposes of sections 469.001  
 8.32 to 469.047 of the real property in an area.

8.33 Sec. 13. [469.401] ACQUISITION BY EMINENT DOMAIN UNDER THIS  
 8.34 CHAPTER.

9.1 Subdivision 1. Application. Sections 469.401 to 469.403 apply to the exercise of  
 9.2 eminent domain powers by a condemning authority under this chapter if the property  
 9.3 interest to be acquired by eminent domain is intended to be sold, transferred, or otherwise  
 9.4 conveyed to a person or nongovernmental entity without the power of eminent domain.

9.5 Subd. 2. Public hearing and notice required. Prior to adoption of a resolution  
 9.6 authorizing the use of eminent domain, the governing body of the condemning authority  
 9.7 must hold a public hearing on the proposed acquisition after published notice in a  
 9.8 newspaper of general circulation in the governing body's jurisdiction and on the governing  
 9.9 body's Web site, if applicable, which must be made at least one time not less than two  
 9.10 weeks nor more than 60 days prior to the date of the hearing. The notice must reasonably  
 9.11 describe the property interest to be acquired, state that the purpose of the hearing is to  
 9.12 consider acquisition by eminent domain, state that comments may be submitted orally  
 9.13 at the hearing or in writing prior to or at the hearing, and specify an address to which  
 9.14 written comments may be mailed. Not less than two weeks before the hearing, notice of  
 9.15 the hearing must also be mailed to the owner of each parcel proposed to be acquired, but  
 9.16 defects in the notice do not invalidate the acquisition. For the purpose of giving mailed  
 9.17 notice, owners are determined as provided by section 429.031, subdivision 1, paragraph  
 9.18 (a). The resolution authorizing the use of eminent domain must not be adopted at the same  
 9.19 meeting or on the same day as the public hearing.

9.20 Subd. 3. Resolution. The resolution authorizing the use of eminent domain must:

9.21 (1) identify and describe the public benefits that are known or expected to result  
 9.22 from the program or project for which the property interest is proposed to be acquired;

9.23 (2) identify and describe the private benefits that are known or expected to result  
 9.24 from the anticipated conveyance of the property interest proposed to be acquired;

9.25 (3) summarize and respond to any oral comments made at the public hearing or  
 9.26 written comments received at or prior to the public hearing; and

9.27 (4) address how the acquisition of the property interest serves one or more identified  
 9.28 public purposes and why the acquisition of the property is reasonably necessary to  
 9.29 accomplish those purposes.

9.30 Subd. 4. Summary of findings. The governing body of a condemning authority  
 9.31 must summarize the findings adopted in the resolution authorizing the use of eminent  
 9.32 domain in the notice of petition required under section 117.055.

9.33 Sec. 14. [469.402] DEFINITIONS.

9.34 Subdivision 1. Scope. For purposes of sections 469.401 to 469.403, the following  
 9.35 terms have the meanings given to them.

10.1 Subd. 2. Abandoned. "Abandoned" means that at least 75 percent of a building's  
 10.2 area has been substantially unoccupied for at least one year prior to the date of inclusion  
 10.3 in a blighted area.

10.4 Subd. 3. Blighted area. "Blighted area" is an area where the condemning authority  
 10.5 finds that the conditions provided in clauses (a), (b), and (c) exist:

10.6 (a) the land is or has been in urban use;

10.7 (b) at least one of the following conditions exist:

10.8 (1) 50 percent or more of the buildings in the area are structurally substandard  
 10.9 or abandoned or a combination thereof;

10.10 (2) 30 percent or more of the parcels in the area constitute an environmentally  
 10.11 contaminated area; or

10.12 (3) (i) 20 percent or more of the buildings in the area are structurally substandard  
 10.13 or abandoned or a combination thereof, and (ii) an additional 30 percent or more of the  
 10.14 buildings in the area are obsolete as evidenced by lack of investment based on limited  
 10.15 building permits for repair or improvements in the previous five years; and

10.16 (c) at least one of the following conditions is present:

10.17 (1) diversity of ownership or defective or unusual conditions of title prevent the  
 10.18 free alienability of land within the area;

10.19 (2) there is inadequate infrastructure in the area;

10.20 (3) the crime rate in the area is higher than in the remainder of the county or  
 10.21 municipality;

10.22 (4) 30 percent of the tax parcels have had delinquent taxes or special assessments for  
 10.23 a period of two years or more prior to inclusion in the area; or

10.24 (5) negative market conditions exist in the area.

10.25 Subd. 4. Environmentally contaminated area. "Environmentally contaminated  
 10.26 area" means:

10.27 (1) any parcel that would be eligible for contamination cleanup grants from: (i) the  
 10.28 Department of Employment and Economic Development's contamination cleanup grant  
 10.29 account under section 116J.552, subdivision 3, or 116J.554, subdivision 2, clause (2); or  
 10.30 (ii) the Metropolitan Council's tax base revitalization account under section 473.252; or

10.31 (2) an area that qualifies as a soils condition district under section 469.174,  
 10.32 subdivision 19.

10.33 Subd. 5. Inadequate infrastructure. "Inadequate infrastructure" means any  
 10.34 publicly owned physical infrastructure including sanitary sewer systems, water systems,  
 10.35 streets, wastewater treatment and pretreatment systems, storm water management systems,  
 10.36 natural gas systems, and electric utility systems which are inadequate to serve either

11.1 existing or projected users in the blighted area because the system is undersized, does not  
 11.2 meet current design standards, or is significantly deteriorated.

11.3 Subd. 6. **Market area.** "Market area" means the geographic or locational  
 11.4 delineation of the market for a specific category of real estate.

11.5 Subd. 7. **Negative market conditions.** "Negative market conditions" are evidenced  
 11.6 by one or more of the following factors for similarly classified property: (1) market values  
 11.7 are lower than in the remainder of the market area, are increasing at rates materially lower  
 11.8 than in the remainder of the market area, or are decreasing compared to the remainder of  
 11.9 the market area; (2) vacancy rates are higher than in the remainder of the market area;  
 11.10 or (3) other comparable evidence of negative market conditions in the blighted area  
 11.11 compared to the market area as a whole.

11.12 Subd. 8. **Public nuisance.** "Public nuisance" has the meaning given in section  
 11.13 609.74.

11.14 Subd. 9. **Structurally substandard.** "Structurally substandard" means a building  
 11.15 that contains defects in structural elements or a combination of deficiencies in essential  
 11.16 utilities and facilities, light and ventilation and fire protection including adequate egress,  
 11.17 which significant defects or deficiencies justify substantial renovation or clearance. A  
 11.18 building is not structurally substandard if it is in compliance with the building code  
 11.19 applicable to new buildings or could be modified to satisfy the building code at a cost of  
 11.20 less than 20 percent of the cost of constructing a new structure of the same square footage  
 11.21 and type on the site. The municipality or condemning authority may find that a building is  
 11.22 not disqualified as structurally substandard under the previous sentence on the basis of  
 11.23 reasonably available evidence, such as the size, type, and age of the building, the average  
 11.24 cost of plumbing, electrical, or structural repairs, or other similar reliable evidence. The  
 11.25 municipality or the condemning authority may not make such a determination without an  
 11.26 interior inspection of the property, but need not have any independent, expert appraisal  
 11.27 prepared of the cost of repair and rehabilitation of the building. An interior inspection  
 11.28 of the property is not required, if the municipality finds that: (1) the municipality or  
 11.29 condemning authority is unable to gain access to the property after using its best efforts to  
 11.30 obtain permission from the party that owns or controls the property; and (2) the evidence  
 11.31 otherwise supports a reasonable conclusion that the building is structurally substandard.  
 11.32 Items of evidence that support such a conclusion include recent fire or police inspections,  
 11.33 on-site property tax appraisals or housing inspections, exterior evidence of deterioration,  
 11.34 or other similar reliable evidence. Written documentation of the findings and reasons why  
 11.35 an interior inspection was not conducted must be made and retained. Failure of a building

12.1 to be disqualified under the provisions of this subdivision is a necessary, but not sufficient  
 12.2 condition by itself, to determine that the building is substandard.

12.3 **Sec. 15. [469.403] LIMITATION ON USE OF EMINENT DOMAIN.**

12.4 Subdivision 1. **Limitation.** Notwithstanding any other provision of law, no  
 12.5 condemning authority under this chapter may exercise the power of eminent domain if the  
 12.6 property interest to be acquired is intended to be sold, transferred, or otherwise conveyed  
 12.7 to a person or nongovernmental entity without the power of eminent domain, unless the  
 12.8 condemning authority finds that the use of eminent domain is necessary to accomplish one  
 12.9 or more of the purposes in subdivision 2.

12.10 Subd. 2. **Purposes.** For purposes of carrying out the powers and authority provided  
 12.11 under this chapter, a condemning authority with the power of eminent domain under  
 12.12 this chapter may exercise that power to acquire land to accomplish one or more of the  
 12.13 following purposes:

12.14 (a) the possession, occupation, or enjoyment of the land by the general public or  
 12.15 by public agencies;

12.16 (b) to remedy a public nuisance;

12.17 (c) to carry out a program to remedy or improve an environmentally contaminated  
 12.18 area;

12.19 (d) to carry out a program to remedy or improve a blighted area; or

12.20 (e) to facilitate development of housing for low or moderate income persons as  
 12.21 defined under any federal, state, or local program.

12.22 Subd. 3. **Economic development.** The public benefits of economic development,  
 12.23 including an increase in tax base, tax revenues, employment, or general economic health,  
 12.24 shall not by themselves constitute a public purpose except as provided in subdivision 4.

12.25 Subd. 4. **Exceptions.** Notwithstanding any other provision of law, a condemning  
 12.26 authority under this chapter may condemn property if one or more of the following forms  
 12.27 of financial assistance are present:

12.28 (1) a grant awarded by a state agency for economic development related purposes, if  
 12.29 a single business receives \$200,000 or more of the grant proceeds;

12.30 (2) a grant award to local units of government or development authorities under  
 12.31 sections 116J.551, 116J.559, 116J.571, and 116J.8731;

12.32 (3) a loan or the guaranty or purchase of a loan made by a state agency for economic  
 12.33 development related purposes if a single business receives \$500,000 or more of the loan  
 12.34 proceeds;



13.1 (4) a reduction, credit, or abatement of a tax assessed under chapter 297A or 290  
13.2 where the tax reduction, credit, or abatement applies to a geographic area smaller than the  
1. entire state and was granted for economic development related purposes; or

13.4 (5) an appropriation by the legislature to acquire or better property, in whole or in  
13.5 part, with the proceeds of state general obligation bonds authorized to be issued under  
13.6 article XI, section 5, clause (a) of the Minnesota Constitution.

13.7 Financial assistance does not include payments by the state of aids and credits under  
13.8 chapter 273 or 477A to a political subdivision.

13.9 Subd. 5. Disclosure. All applicants must indicate on applications for financial  
13.10 assistance under subdivision 4 whether the use of eminent domain may be necessary to  
13.11 acquire property for the project.

1. Sec. 16. EFFECTIVE DATE.

13.13 Sections 1 to 6 and 10 and 11 are effective for condemnation proceedings that  
13.14 are commenced on or after August 1, 2006. Sections 7, 8, and 9 are effective for all  
13.15 acquisitions in which the initial notice of eligibility is given on or after August 1,  
13.16 2006. Sections 12 to 15 apply to any property that is included in a redevelopment plan  
13.17 established on or after August 1, 2006.

13.18 Sec. 17. SUNSET.

13.19 Sections 14 and 15 expire January 1, 2009.

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# Senate

State of Minnesota

## **S.F. No. 2694 - Eminent Domain**

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**Date:** March 8, 2006

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**Section 1** amends the statute dealing with appraisal and negotiation requirements applicable to acquisition of property for transportation purposes to expand it to include all eminent domain proceedings. Amendments are included with respect to the exchange of appraisals and the applicable time periods. The current \$1,500 cap on owner appraisals would only be applicable to single-family and two-family residential property, agricultural property, and minimum damage acquisitions, but for other types of property the cap is increased to \$5,000. In addition, 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 2** 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.

**Section 3** contains requirements for the appeal of an order challenging the public purpose, necessity, or authority for a taking.

**Section 4** authorizes the court to award reasonable attorney fees in cases where the court determines that a taking is not for a public purpose or is unlawful.

**Section 5** increases the appraisal fees that may be awarded, consistent with the raise in the caps under **section 1**.

**Section 6** contains right of first refusal requirements applicable in cases where the governing body of an acquiring authority determines that publicly owned property acquired through eminent domain has not been used and is no longer needed. The authority must offer to sell the property to

the owner from whom it was acquired and, if the owner can be located, offer to sell the property at the current fair-market value. If that value is less than what the acquiring authority paid for the property, it must offer to sell the property for the amount that it paid. Requirements for attempting to locate the former owner are specified. These provisions would not apply if the acquiring authority has an alternative use for the property and it would remain in public ownership or to acquisitions for transportation purposes made by the Commissioner of Transportation (separate law governs right of first refusal in those cases).

**Sections 7 to 9** 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).

**Sections 10 and 11** amend notice requirements and appeals for eminent domain proceedings by the Department of Transportation, consistent with the changes made in **sections 2 and 3**.

**Section 12** strikes language dealing with public hearing requirements for certain acquisitions under chapter 469, consistent with the new language in **section 13**.

**Section 13** provides that the new provisions in **sections 13 to 15** apply to the exercise of eminent domain power under **chapter 469**, if the property interest to be acquired is intended to be sold, transferred, or conveyed to a person or nongovernmental entity without the power of eminent domain. Public hearing and notice requirements are included, which would be applicable before adoption of a resolution authorizing the use of eminent domain. In addition, an authorizing resolution would have to contain specified provisions and the governing body must summarize the findings adopted in the resolution in its petition under **chapter 117**.

**Section 14** contains the definitions that are applicable to **section 15**, which contains limitations on the use of eminent domain under **chapter 469** in cases where property will be transferred to a person or nongovernment entity without the power of eminent domain. These definitions are similar to definitions in the tax increment financing law.

**Section 15** contains the limitations on the use of eminent domain for property that is going to be transferred to a person or nongovernment entity without the power of eminent domain.

**Subdivision 1** contains the general limitation.

**Subdivision 2** contains exceptions and specifies purposes for which the power of eminent domain may be exercised under **chapter 469** even though the property will be transferred to a private person.

**Subdivisions 3 and 4** outline the circumstances under which economic development is a proper purpose. In general, it is tied to situations where various forms of public financial assistance are present.

**Subdivision 5** requires applicants for financial assistance described in **subdivision 4** to indicate on applications whether the use of eminent domain may be necessary to acquire property for the project.

**Section 16** contains the effective dates.

**Section 17** includes a January 1, 2009, sunset on **sections 14 and 15**.

KP:cs

1.1 **Senator Betzold from the Committee on Judiciary, to which was referred**

1.2 **S.F. No. 2750:** A bill for an act relating to eminent domain; defining public use or  
1.4 purpose; prohibiting the use of eminent domain for economic development; requiring  
1.5 clear and convincing evidence for certain takings; providing for attorney fees and other  
1.6 additional elements of compensation; making other changes in the exercise of eminent  
1.7 domain; amending Minnesota Statutes 2004, sections 117.025; 117.075, subdivision 1;  
proposing coding for new law in Minnesota Statutes, chapter 117.

1.8 Reports the same back with the recommendation that the bill be amended as follows:

1.9 Delete everything after the enacting clause and insert:

1.10 "Section 1. **[117.012] PREEMPTION; NO IMPLIED AUTHORITY.**

1.11 **Subdivision 1. Preemption.** Notwithstanding any other provision of law, including  
1.12 any charter provision, ordinance, statute, or special law, all condemning authorities,  
1.13 including home rule charter cities and all other political subdivisions of the state, must  
1.14 exercise the power of eminent domain in accordance with the provisions of this chapter,  
1.15 including all procedures, definitions, remedies, and limitations. Additional procedures,  
1.16 remedies, or limitations that do not deny or diminish the substantive and procedural rights  
1.17 and protections of owners under this chapter may be provided by other law, ordinance,  
1.18 or charter.

1.19 **Subd. 2. No implied authority.** The power of eminent domain shall not be implied.  
1.20 In order to exercise the power of eminent domain, the condemning authority must have an  
1.21 express grant of eminent domain authority.

1.22 Sec. 2. Minnesota Statutes 2004, section 117.025, is amended to read:

1.23 **117.025 DEFINITIONS.**

1.24 **Subdivision 1. Words, terms, and phrases.** ~~Unless the language or context clearly~~  
1.25 ~~indicates that a different meaning is intended,~~ For the purposes of this chapter and any  
1.26 other general or special law authorizing the exercise of the power of eminent domain, the  
1.27 words, terms, and phrases defined in this section have the meanings given them.

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

1.31 **Subd. 3. Owner.** "Owner" includes all persons ~~interested in such~~ with any interest  
1.32 in the property subject to a taking, whether as proprietors, tenants, life estate holders,  
1.33 encumbrancers, beneficial interest holders, or otherwise.

1.34 **Subd. 4. Condemning authority.** "Condemning authority" means a person or  
entity with the power of eminent domain.

1.36 **Subd. 5. Abandoned property.** "Abandoned property" means property not  
1.37 occupied by a person with a legal or equitable right to occupy the property and for which

2.1 the condemning authority is unable to identify and contact the owner despite making  
2.2 reasonable efforts.

2.3 Subd. 6. **Blighted area.** "Blighted area" means an area:

2.4 (1) that is zoned and used for urban use; and

2.5 (2) where more than 50 percent of the buildings are dilapidated.

2.6 Subd. 7. **Dilapidated building.** "Dilapidated building" means a building:

2.7 (1) that was inspected by the appropriate local government and cited for one or more  
2.8 building code violations at least 12 months before the condemnation is commenced;

2.9 (2) in which the building code violations cited have not been remedied, as  
2.10 determined by at least one reinspection that finds noncompliance after the due date for  
2.11 compliance with an order to correct a building code violation; and

2.12 (3) that, as of the date the condemnation is commenced, is unfit for human use  
2.13 because it is unsafe, structurally unsound, or lacking in basic equipment.

2.14 Subd. 8. **Environmentally contaminated area.** "Environmentally contaminated  
2.15 area" means an area:

2.16 (1) that contains, on or below more than 50 percent of its surface area, any substance  
2.17 defined, regulated, or listed as a hazardous substance, hazardous material, hazardous  
2.18 waste, toxic waste, pollutant, contaminant, or toxic substance, or identified as hazardous to  
2.19 human health or the environment under state or federal law or regulation; and

2.20 (2) for which the costs of investigation, monitoring and testing, and remedial action  
2.21 or removal, as defined in section 115B.02, subdivisions 16 and 17, respectively, including  
2.22 any state costs of remedial actions, exceed 100 percent of the assessor's estimated market  
2.23 value for the contaminated area, as determined under section 273.11, for property taxes  
2.24 payable in the year in which the condemnation commenced.

2.25 Subd. 9. **Public nuisance.** "Public nuisance" means a public nuisance under  
2.26 section 609.74.

2.27 Subd. 10. **Public service corporation.** "Public service corporation" means a  
2.28 public utility; gas, electric, telephone, or cable communications company; cooperative  
2.29 association; natural gas pipeline company; crude oil, or petroleum products pipeline  
2.30 company; municipal utility; municipality when operating its municipally owned utilities;  
2.31 or municipal power agency. Public service corporation also means a municipality or  
2.32 public corporation when operating an airport under chapter 360 or 473, a common carrier,  
2.33 a watershed district, or a drainage authority.

2.34 Subd. 11. **Public use; public purpose.** (a) "Public use" or "public purpose" means,  
2.35 exclusively:

3.1 (1) the possession, occupation, ownership, and enjoyment of the land by the general  
 3.2 public, or by public agencies;

(2) the creation or functioning of a public service corporation; or

3.4 (3) mitigation of a blighted area, remediation of an environmentally contaminated  
 3.5 area, reduction of abandoned property, or removal of a public nuisance.

3.6 (b) The public benefits of economic development, including an increase in tax base,  
 3.7 tax revenues, employment, or general economic health, do not by themselves constitute  
 3.8 a public use or public purpose.

3.9 **Sec. 3. [117.027] CONDEMNATION FOR BLIGHT MITIGATION AND**  
 3.10 **CONTAMINATION REMEDIATION.**

3.11 **Subdivision 1. Nondilapidated buildings in areas of blight mitigation; absolute**  
 3.12 **necessity. In taking property to mitigate blight, a condemning authority must not take**  
 3.13 **nondilapidated buildings in the area unless it is absolutely necessary in order to remove**  
 3.14 **the dilapidated buildings.**

3.15 **Subd. 2. Uncontaminated property in environmental contamination**  
 3.16 **remediation areas; absolute necessity. In taking property to remediate environmental**  
 3.17 **contamination, a condemning authority must not take uncontaminated parcels in the area**  
 3.18 **unless it is absolutely necessary in order to complete remediation of the contaminated area.**

3.19 **Subd. 3. Contribution to condition by developer disallowed. If a developer**  
 3.20 **involved in the redevelopment of the project area contributed to the blight or environmental**  
 3.21 **contamination within the project area, the condition contributed to by the developer must**  
 3.22 **not be used in the determination of blight or environmental contamination.**

3.23 Sec. 4. Minnesota Statutes 2004, section 117.036, is amended to read:

3.24 **117.036 APPRAISAL AND NEGOTIATION REQUIREMENTS**  
 3.25 **~~APPLICABLE TO ACQUISITION OF PROPERTY FOR TRANSPORTATION~~**  
 3.26 **~~PURPOSES.~~**

3.27 Subdivision 1. **Application.** This section applies to the acquisition of property  
 3.28 ~~for public highways, streets, roads, alleys, airports, mass transit facilities, or for other~~  
 3.29 ~~transportation facilities or purposes~~ under this chapter.

3.30 Subd. 2. **Appraisal.** (a) Before commencing an eminent domain proceeding under  
 3.31 this chapter, the acquiring authority must obtain at least one appraisal for the property  
 3.32 proposed to be acquired. In making the appraisal, the appraiser must confer with one or  
 3.33 more of the fee owners or contract purchasers of the property, if reasonably possible. ~~At~~  
 3.34 ~~least 20~~ The acquiring authority must provide the fee owner or contract purchaser with  
 3.35 a copy of the appraisal at the time an offer is made, but no later than 60 days before

4.1 presenting a petition under section 117.055, ~~the acquiring authority must provide the~~  
4.2 ~~owner with a copy of the appraisal and inform the owner of the owner's fee owner or~~  
4.3 ~~contract purchaser of the right to obtain an appraisal under this section. Upon request,~~  
4.4 the acquiring authority must make available to the fee owner or contract purchaser all  
4.5 appraisals of the property.

4.6 (b) The fee owner or contract purchaser may obtain an appraisal by a qualified  
4.7 appraiser of the property proposed to be acquired. The fee owner or contract purchaser  
4.8 is entitled to reimbursement for the reasonable costs of the appraisal from the acquiring  
4.9 authority up to a maximum of \$1,500 ~~within 30 days after the~~ for single family and  
4.10 two-family residential property, agricultural property, and minimum damage acquisitions  
4.11 and \$5,000 for other types of property, provided that the fee owner or contract purchaser  
4.12 submits to the acquiring authority the information necessary for reimbursement, provided  
4.13 that the owner does so including a copy of the fee owner's or contract purchaser's  
4.14 appraisal, within 60 90 days after the owner receives receiving the appraisal from the  
4.15 authority under paragraph (a) and at least five days before a condemnation commissioners'  
4.16 hearing. For purposes of this paragraph, a "minimum damage acquisition" means an  
4.17 interest in property that a qualified person with appraisal knowledge indicates can be  
4.18 acquired for a cost of \$10,000 or less. For purposes of this paragraph, "agricultural  
4.19 property" has the meaning given in section 583.22, subdivision 2.

4.20 (c) The acquiring authority must pay the reimbursement to the fee owner or contract  
4.21 purchaser within 30 days after receiving a copy of the appraisal and the reimbursement  
4.22 information. Upon agreement between the acquiring authority and either the fee owner  
4.23 or contract purchaser, the acquiring authority may pay the reimbursement directly to  
4.24 the appraiser.

4.25 Subd. 3. **Negotiation.** In addition to the appraisal requirements under subdivision 2,  
4.26 before commencing an eminent domain proceeding, the acquiring authority must make a  
4.27 good faith attempt to negotiate personally with the fee owner or contract purchaser of the  
4.28 property in order to acquire the property by direct purchase instead of the use of eminent  
4.29 domain proceedings. In making this negotiation, the acquiring authority must consider  
4.30 the appraisals in its possession, including any appraisal obtained and furnished by the fee  
4.31 owner or contract purchaser if available, and other information that may be relevant to a  
4.32 determination of damages under this chapter.

4.33 Subd. 4. **Use of appraisal at commissioners' hearing.** An appraisal must not be  
4.34 used or considered in a condemnation commissioners' hearing, nor may the appraiser who  
4.35 prepared the appraisal testify, unless a copy of the appraiser's written report is provided to  
4.36 the opposing party at least five days before the hearing.



5.1 Sec. 5. [117.0412] LOCAL GOVERNMENT PUBLIC HEARING

5.2 REQUIREMENTS.

5.3 Subdivision 1. Definitions. For the purposes of this section:

5.4 (1) "local government" means the elected governing body of a statutory or home  
5.5 rule charter city, county, or township; and

5.6 (2) "local government agency" means a subdivision, agency, authority, or other entity  
5.7 of the local government, including a port authority, economic development authority,  
5.8 housing and redevelopment authority, or other similar entity established under law.

5.9 Subd. 2. Public hearing; vote by local government governing body. (a) Before a  
5.10 local government or local government agency commences an eminent domain proceeding  
5.11 under section 117.055, a public hearing must be held as provided in this section. The local  
5.12 government must notify each owner of property that may be acquired in writing of the  
5.13 public hearing on the proposed taking, post the public hearing information on the local  
5.14 government's Web site, if any, and publish notice of the public hearing in a newspaper  
5.15 of general circulation in the local government's jurisdiction. Notice must be provided at  
5.16 least 30 days but not more than 60 days before the hearing.

5.17 (b) Any interested person must be allowed reasonable time to present relevant  
5.18 testimony at the public hearing. The proceedings of the hearing must be recorded and  
5.19 available to the public for review and comment at reasonable times and a reasonable place.  
5.20 At the next regular meeting of the local government that is at least 30 days after the public  
5.21 hearing, the local government must vote on the question of whether to authorize the local  
5.22 government or local government agency to use eminent domain to acquire the property.

5.23 Subd. 3. Resolution. If the taking is for the mitigation of a blighted area,  
5.24 remediation of an environmentally contaminated area, reducing abandoned property, or  
5.25 removing a public nuisance, then the resolution of a local government or local government  
5.26 agency authorizing the use of eminent domain must:

5.27 (1) identify and describe the public costs and benefits that are known or expected  
5.28 to result from the program or project for which the property interest is proposed to be  
5.29 acquired; and

5.30 (2) address how the acquisition of the property interest serves one or more identified  
5.31 public purposes and why the acquisition of the property is reasonably necessary to  
5.32 accomplish those purposes.

5.33 Sec. 6. Minnesota Statutes 2004, section 117.055, is amended to read:

5.34 **117.055 PETITION AND NOTICE.**

6.1 Subdivision 1. Petition. In all cases a petition, describing the desired land, stating by  
6.2 whom and for what purposes it is proposed to be taken, and giving the names of all persons  
6.3 appearing of record or known to the petitioner to be the owners thereof shall be presented  
6.4 to the district court of the county in which the land is situated praying for the appointment  
6.5 of commissioners to appraise the damages which may be occasioned by such taking.

6.6 Subd. 2. Notice. (a) Notice of the objects of the petition and of the time and place of  
6.7 presenting the same shall be served at least 20 days before such time of presentation upon  
6.8 all persons named in the petition as owners as defined in section 117.025, subdivision 3,  
6.9 and upon all occupants of such land in the same manner as a summons in a civil action.

6.10 (b) The notice must state that:

6.11 (1) a party wishing to challenge the public purpose, necessity, or authority for a  
6.12 taking must appear at the court hearing and state the objection; and

6.13 (2) a court order approving the public purpose, necessity, and authority for the taking  
6.14 is final unless an appeal is brought within 60 days after service of the order on the party.

6.15 (c) If any such owner be not a resident of the state, or the owner's place of residence  
6.16 be unknown to the petitioner, upon the filing of an affidavit of the petitioner or the  
6.17 petitioner's agent or attorney, stating that the petitioner believes that such owner is not  
6.18 a resident of the state, and that the petitioner has mailed a copy of the notice to the  
6.19 owner at the owner's place of residence, or that after diligent inquiry the owner's place  
6.20 of residence cannot be ascertained by the affiant, then service may be made upon such  
6.21 owner by three weeks' published notice. If the state be an owner, the notice shall be  
6.22 served upon the attorney general. Any owner not served as herein provided shall not be  
6.23 bound by such proceeding except upon voluntarily appearing therein. Any owner shall  
6.24 be furnished a right-of-way map or plat of all that part of land to be taken upon written  
6.25 demand, provided that the petitioner shall have ten days from the receipt of the demand  
6.26 within which to furnish the same. Any plans or profiles which the petitioner has shall be  
6.27 made available to the owner for inspection.

6.28 Sec. 7. Minnesota Statutes 2004, section 117.075, subdivision 1, is amended to read:

6.29 Subdivision 1. Hearing on taking; evidentiary standard. (a) Upon proof being  
6.30 filed of the service of such notice, the court, at the time and place therein fixed or to which  
6.31 the hearing may be adjourned, shall hear all competent evidence offered for or against the  
6.32 granting of the petition, regulating the order of proof as it may deem best.

6.33 (b) If the taking is for the mitigation of a blighted area, remediation of an  
6.34 environmentally contaminated area, reducing abandoned property, or removing a  
6.35 public nuisance, then, notwithstanding any other provision of general or special law, a

7.1 condemning authority must show by preponderance of the evidence that the taking is  
7.2 necessary and for the designated public use.

7.3 (c) A court order approving the public purpose, necessity, and authority for the taking  
7.4 is final unless an appeal is brought within 60 days after service of the order on the party.

7.5 Sec. 8. Minnesota Statutes 2004, section 117.075, is amended by adding a subdivision  
7.6 to read:

7.7 Subd. 1b. Attorney fees. If the court determines that a taking is not for a public  
7.8 purpose or is unlawful, the court shall award the owner reasonable attorney fees and other  
7.9 related expenses, fees, and costs.

7.10 Sec. 9. Minnesota Statutes 2004, section 117.085, is amended to read:

7.11 **117.085 COMMISSIONERS, POWERS, DUTIES.**

7.12 The commissioners, having been duly sworn and qualified according to law, shall  
7.13 meet as directed by the order of appointment and hear the allegations and proofs of all  
7.14 persons interested touching the matters to them committed. They may adjourn from time  
7.15 to time and from place to place within the county, giving oral notice to those present of  
7.16 the time and place of their next meeting. All testimony taken by them shall be given  
7.17 publicly, under oath, and in their presence. They shall view the premises, and any of  
7.18 them may subpoena witnesses, which shall be served as subpoenas in civil actions are  
7.19 served, and at the cost of the parties applying therefor. If deemed necessary, they may  
7.20 require the petitioner or owner to furnish for their use maps, plats, and other information  
7.21 which the petitioner or owner may have showing the nature, character, and extent of the  
7.22 proposed undertaking and the situation of lands desired therefor. In proper cases they may  
7.23 reserve to the owner a right-of-way or other privilege in or over the land taken, or attach  
7.24 reasonable conditions to such taking in addition to the damages given or they may make  
7.25 an alternative award, conditioned upon the granting or withholding of the right specified.  
7.26 Without unreasonable delay they shall make a separate assessment and award of the  
7.27 damages which in their judgment will result to each of the owners of the land by reason  
7.28 of such taking and report the same to the court. The commissioners shall not reduce the  
7.29 amount of the damages awarded because the land being taken is, at the time of the taking,  
7.30 valued under section 273.111, designated as an agricultural preserve under chapter 473H.  
7.31 The commissioners, in all such proceedings, may in their discretion allow and show  
7.32 separately in addition to the award of damages, reasonable appraisal fees not to exceed a  
7.33 total of ~~\$500~~ \$1,500 for single family and two-family residential property, agricultural  
7.34 property, and minimum damage acquisitions and \$5,000 for other types of property. Upon  
7.35 request of an owner the commissioners shall show in their report the amount of the award

8.1 of damages which is to reimburse the owner and tenant or lessee for the value of the land  
8.2 taken, and the amount of the award of damages, if any, which is to reimburse the owner  
8.3 and tenant or lessee for damages to the remainder involved, whether or not described in  
8.4 the petition. The amounts awarded to each person shall also be shown separately. The  
8.5 commissioners shall, if requested by any party, make an express finding of the estimated  
8.6 cost of removal and remedial actions that will be necessary on the taken property because  
8.7 of existing environmental contamination.

8.8 **Sec. 10. [117.186] COMPENSATION FOR LOSS OF GOING CONCERN.**

8.9 **Subdivision 1. Definitions.** For purposes of this section:

8.10 (1) "going concern" means the benefits that accrue to a business or trade as a result  
8.11 of its location, reputation for dependability, skill or quality, customer base, good will, or  
8.12 any other circumstances resulting in the probable retention of old or acquisition of new  
8.13 patronage; and

8.14 (2) "owner" has the meaning given in section 117.025 and includes a lessee who  
8.15 operates a business on real property that is the subject of an eminent domain proceeding.

8.16 **Subd. 2. Compensation.** In all eminent domain proceedings, the owner of a business  
8.17 or trade must be compensated for the loss of a going concern if the owner establishes that:

8.18 (1) the business or trade has been destroyed as a result of the taking;

8.19 (2) the loss cannot be reasonably prevented by relocating the business or trade in the  
8.20 same or a similar and reasonably suitable location as the property that was taken, or by  
8.21 taking steps and adopting procedures that a reasonably prudent person of a similar age  
8.22 and under similar conditions as the owner would take and adopt in preserving the going  
8.23 concern of the business or trade; and

8.24 (3) compensation for the loss of going concern will not be duplicated in the  
8.25 compensation otherwise awarded to the owner of the business or trade.

8.26 **Subd. 3. Procedure.** In all cases where an owner seeks compensation for loss  
8.27 of a going concern, the court must determine, upon motion by the owner, whether the  
8.28 going concern has been taken. If the court determines that there is a taking of the going  
8.29 concern, any damages must be determined by the commissioners under section 117.105  
8.30 and must be reported in the award of the commissioners separate from the award of just  
8.31 compensation for the real property taken. An award for loss of going concern may be  
8.32 appealed by any party in accordance with section 117.145.

8.33 **Sec. 11. [117.187] MINIMUM COMPENSATION.**

8.34 When an owner must relocate, the amount of damages payable, at a minimum, must  
8.35 be sufficient for an owner to purchase a similar house or building of equivalent size in

9.1 the community and not less than the condemning authority's payment or deposit under  
9.2 section 117.042.

9.3 **Sec. 12. [117.188] LIMITATIONS.**

9.4 The condemning authority must not require the owner to accept as part of the  
9.5 compensation due any substitute or replacement property. The condemning authority must  
9.6 not require the owner to accept the return of property acquired or any portion thereof.

9.7 **Sec. 13. [117.189] PUBLIC SERVICE CORPORATION EXCEPTIONS.**

9.8 Sections 117.036; 117.055, subdivision 2, paragraph (b); 117.075, subdivision 1b;  
9.9 117.186; 117.187; 117.188; and 117.52, subdivision 1a, to not apply to public service  
9.10 corporations. For purposes of an award of appraisal fees under section 117.085, the fees  
9.11 awarded may not exceed \$500 for all types of property.

9.12 **Sec. 14. [117.196] ATTORNEY FEES.**

9.13 If the final judgment or award of damages is at least 20 percent greater than the last  
9.14 written offer of compensation made by the condemning authority before the filing of the  
9.15 petition, the court may award the owner reasonable attorney fees and costs in addition to  
9.16 other compensation and fees authorized by this chapter.

9.17 **Sec. 15. Minnesota Statutes 2004, section 117.51, is amended to read:**

9.18 **117.51 COOPERATION WITH FEDERAL AUTHORITIES.**

9.19 In all acquisitions undertaken by any acquiring authority and in all voluntary  
9.20 rehabilitation carried out by a person pursuant to acquisition or as a consequence thereof,  
9.21 the acquiring authority shall cooperate to the fullest extent with federal departments and  
9.22 agencies, and it shall take all necessary action in order to insure, to the maximum extent  
9.23 possible, federal financial participation in any and all phases of acquisition, including the  
9.24 provision of relocation assistance, services, payments and benefits to displaced persons.  
9.25 ~~An acquiring authority may consider reimbursing up to \$50,000 in reestablishment~~  
9.26 ~~expenses of a displaced business.~~

9.27 **Sec. 16. Minnesota Statutes 2004, section 117.52, subdivision 1, is amended to read:**

9.28 **Subdivision 1. Lack of federal funding.** In all acquisitions undertaken by any  
9.29 acquiring authority and in all voluntary rehabilitation carried out by a person pursuant  
9.30 to acquisition or as a consequence thereof, in which, due to the lack of federal financial  
9.31 participation, relocation assistance, services, payments and benefits under the Uniform  
9.32 Relocation Assistance and Real Property Acquisition Policies Act of 1970, United States  
9.33 Code, title 42, sections 4601 to 4655, as amended by the Surface Transportation and

10.1 Uniform Relocation Assistance Act of 1987, Statutes at Large, volume 101, pages 246  
10.2 to 256 (1987), are not available, the acquiring authority, as a cost of acquisition, shall  
10.3 provide all relocation assistance, services, payments and benefits required by the Uniform  
10.4 Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended by  
10.5 the Surface Transportation and Uniform Relocation Assistance Act of 1987, and those  
10.6 regulations adopted pursuant thereto, and either (1) in effect as of ~~July 1, 1988~~ January 1,  
10.7 2006, or (2) becoming effective after ~~July 1, 1988~~ January 1, 2006, following a public  
10.8 hearing and comment. Comments received by an acquiring authority within 30 days after  
10.9 the public hearing must be reviewed and a written response provided to the individual or  
10.10 organization who initiated the comment. The response and comments may be addressed in  
10.11 another public hearing by the acquiring authority before approval.

10.12 Sec. 17. Minnesota Statutes 2004, section 117.52, is amended by adding a subdivision  
10.13 to read:

10.14 Subd. 1a. **Reestablishment costs limit.** For purposes of relocation benefits paid by  
10.15 the acquiring authority in accordance with this section, the provisions of Code of Federal  
10.16 Regulations, title 49, section 24.304, with respect to reimbursement of reestablishment  
10.17 expenses for nonresidential moves are applicable, except that the acquiring authority shall  
10.18 reimburse the displaced business for expenses actually incurred up to a maximum of  
10.19 \$50,000.

10.20 Sec. 18. Minnesota Statutes 2004, section 163.12, subdivision 1a, is amended to read:

10.21 **Subd. 1a. Petition, notice, and access to information.** (a) Upon passage of the  
10.22 resolution specified in section 163.11, subdivision 2, a petition must be presented to the  
10.23 district court of the county in which the land is located. The petition must describe each  
10.24 tract of land through which the highway passes, state the purposes for which the land is  
10.25 proposed to be taken, and list the names of all persons appearing of record or known to  
10.26 the county to be the landowners.

10.27 (b) Notice of the objects of the petition and of the time and place of presenting the  
10.28 notice must be served, together with a copy of the resolution, upon each occupant of  
10.29 each tract of land through which the highway passes at least 20 days before the hearing  
10.30 under subdivision 1b. If an owner is not a resident of the state, or the owner's place of  
10.31 residence is unknown to the county, service may be made by three weeks' published  
10.32 notice following the filing of an affidavit on behalf of the county by the county's agent or  
10.33 attorney stating that the county:

10.34 (1) believes that the owner is not a resident of the state; and

11.1 (2) has either mailed a copy of the notice to the owner at the owner's last known  
11.2 residence address or, after diligent inquiry, the owner's place of residence cannot be  
11.3 ascertained by the county.

11.4 If the state is an owner, the notice must be served upon the attorney general. An  
11.5 owner not served as provided in this subdivision is not bound by the proceeding, except if  
11.6 the owner voluntarily appears in the proceeding.

11.7 (c) Within ten days of an owner's demand, the owner must be furnished a  
11.8 right-of-way map or plat of all that part of the owner's land to be taken. Any applicable  
11.9 plans or profiles that the county possesses must be made available to the owner for  
11.10 inspection.

11.11 (d) The notice must state that:

11.12 (1) a party wishing to challenge the public purpose, necessity, or authority for the  
11.13 taking must appear at the court hearing and state the objection; and

11.14 (2) a court order approving the public purpose, necessity, and authority for the taking  
11.15 is final unless an appeal is brought within 60 days after service of the order on the party.

11.16 Sec. 19. Minnesota Statutes 2004, section 163.12, subdivision 1b, is amended to read:

11.17 Subd. 1b. **Finding of necessity.** When proof of service of the notice required in  
11.18 subdivision 1a is filed with the court, the court shall hear all competent evidence offered  
11.19 for or against granting the petition at the time and place fixed in the notice or otherwise set  
11.20 by the court. On finding that the proposed taking is necessary and authorized by law the  
11.21 court shall order the proceedings to commence pursuant to the remaining provisions of  
11.22 this section. The court order finding the taking necessary and authorized by law is a final  
11.23 order and must be appealed within 60 days from its service on the party.

11.24 Sec. 20. Minnesota Statutes 2004, section 469.012, subdivision 1g, is amended to read:

11.25 Subd. 1g. **Get property; eminent domain.** (a) An authority may, within its area of  
11.26 operation, acquire real or personal property or any interest therein by gifts, grant, purchase,  
11.27 exchange, lease, transfer, bequest, devise, or otherwise, and by the exercise of the power  
11.28 of eminent domain, in the manner provided by chapter 117, acquire real property which it  
11.29 may deem necessary for its purposes, after the adoption by it of a resolution declaring that  
11.30 the acquisition of the real property is necessary:

11.31 (1) to eliminate one or more of the conditions found to exist in the resolution adopted  
11.32 pursuant to section 469.003 or to provide decent, safe, and sanitary housing for persons  
11.33 of low and moderate income; or

11.34 (2) to carry out a redevelopment project.

12.1 (b) Real property needed or convenient for a project may be acquired by the  
12.2 authority for the project by condemnation pursuant to this section and chapter 117.

12.3 ~~(c) Prior to adoption of a resolution authorizing acquisition of property by  
12.4 condemnation, the governing body of the authority must hold a public hearing on the  
12.5 proposed acquisition after published notice in a newspaper of general circulation in the  
12.6 municipality, which must be made at least one time not less than ten days nor more than  
12.7 30 days prior to the date of the hearing. The notice must reasonably describe the property  
12.8 to be acquired and state that the purpose of the hearing is to consider acquisition by  
12.9 exercise of the authority's powers of eminent domain. Not less than ten days before the  
12.10 hearing, notice of the hearing must also be mailed to the owner of each parcel proposed  
12.11 to be acquired, but failure to give mailed notice or any defects in the notice does not  
12.12 invalidate the acquisition. For the purpose of giving mailed notice, owners are determined  
1 in accordance with section 429.031, subdivision 1, paragraph (a).~~

12.14 ~~(d)~~ (c) Property acquired by condemnation under this section may include any  
12.15 property devoted to a public use, whether or not held in trust, notwithstanding that the  
12.16 property may have been previously acquired by condemnation or is owned by a public  
12.17 utility corporation, because the public use in conformity with the provisions of sections  
12.18 469.001 to 469.047 shall be deemed a superior public use. Property devoted to a public  
12.19 use may be so acquired only if the governing body of the municipality has approved  
12.20 its acquisition by the authority.

12.21 ~~(e)~~ (d) An award of compensation shall not be increased by reason of any increase  
12.22 in the value of the real property caused by the assembly, clearance or reconstruction, or  
12.23 proposed assembly, clearance or reconstruction for the purposes of sections 469.001  
12.24 to 469.047 of the real property in an area.

12.25 **Sec. 21. REVISOR'S INSTRUCTION.**

12.26 The revisor shall change the phrase "right of eminent domain" where found in  
12.27 Minnesota Statutes and Minnesota Rules to "power of eminent domain."

12.28 **Sec. 22. EFFECTIVE DATE.**

12.29 This act is effective the day following final enactment and applies to condemnation  
12.30 proceedings for which service of notice of the petition under Minnesota Statutes, section  
12.31 117.055, is made on or after March 1, 2006."

12.32 Amend the title accordingly

12.33 And when so amended the bill do pass and be re-referred to the Committee on State  
12.34 and Local Government Operations. Amendments adopted. Report adopted.

.....  
(Committee Chair)

March 9, 2006 .....  
(Date of Committee recommendation)



**Senators Bakk, Kiscaden, Bachmann, Chaudhary and Kubly introduced - - S.F. No. 2750: Referred to the Committee on Judiciary.**

A bill for an act relating to eminent domain; defining public use or purpose; prohibiting the use of eminent domain for economic development; requiring clear and convincing evidence for certain takings; providing for attorney fees and other additional elements of compensation; making other changes in the exercise of eminent domain; amending Minnesota Statutes 2004, sections 117.025; 117.075, subdivision 1; proposing coding for new law in Minnesota Statutes, chapter 117.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

**Section 1. [117.012] PREEMPTION; NO IMPLIED AUTHORITY.**

Subdivision 1. Preemption. Notwithstanding any other provision of law, including any charter provision, ordinance, statute, or special law, all condemning authorities, including home rule charter cities and all other political subdivisions of the state, must exercise the power of eminent domain in accordance with the provisions of this chapter, including all procedures, definitions, remedies, and limitations. Additional procedures, remedies, or limitations that do not deny or diminish the substantive and procedural rights and protections of owners under this chapter may be provided by other law, ordinance, or charter.

Subd. 2. No implied authority. The power of eminent domain shall not be implied. In order to exercise the power of eminent domain, the condemning authority must have an express grant of eminent domain authority.

Sec. 2. Minnesota Statutes 2004, section 117.025, is amended to read:

**117.025 DEFINITIONS.**

~~Subdivision 1. Words, terms, and phrases. Unless the language or context clearly indicates that a different meaning is intended;~~ For the purposes of this chapter and any

2.1 other general or special law authorizing the exercise of the power of eminent domain, the  
 2.2 words, terms, and phrases defined in this section have the meanings given them.

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

2.6 Subd. 3. **Owner.** "Owner" includes all persons ~~interested in such~~ with any interest  
 2.7 in the property subject to a taking, whether as proprietors, tenants, life estate holders,  
 2.8 encumbrancers, beneficial interest holders, or otherwise.

2.9 Subd. 4. **Condemning authority.** "Condemning authority" means any person or  
 2.10 entity with the power of eminent domain.

2.11 Subd. 5. **Abandoned property.** "Abandoned property" means property not occupied  
 2.12 by a person with a legal or equitable right to occupy it and for which the condemning  
 2.13 authority is unable to identify and contact the owner despite making reasonable efforts.

2.14 Subd. 6. **Blighted area.** (a) "Blighted area" means, exclusively, at the time of  
 2.15 condemnation, an area:

2.16 (1) that is zoned and used for urban use; and

2.17 (2) where more than 50 percent of the buildings are dilapidated.

2.18 Subd. 7. **Dilapidated building.** "Dilapidated building" means, exclusively, a  
 2.19 building:

2.20 (1) that was inspected by the appropriate local government and cited for one or more  
 2.21 building code violations at least 12 months before the condemnation is commenced;

2.22 (2) in which the building code violations cited have not been remedied, as  
 2.23 determined by at least one reinspection that finds noncompliance after the due date for  
 2.24 compliance with an order to correct a building code violation; and

2.25 (3) that, as of the date the condemnation is commenced, is unfit for human use  
 2.26 because it is unsafe, structurally unsound, or lacking in basic equipment.

2.27 Subd. 8. **Environmentally contaminated area.** "Environmentally contaminated  
 2.28 area" means an area:

2.29 (1) that contains, on or below more than 50 percent of its surface area, any substance  
 2.30 or substances defined, regulated, or listed as a hazardous substance, hazardous material,  
 2.31 hazardous waste, toxic waste, pollutant, contaminant, or toxic substance, or identified as  
 2.32 hazardous to human health or the environment under state or federal law or regulation; and

2.33 (2) for which the costs of investigation, monitoring and testing, and remedial action  
 2.34 or removal, as defined in section 115B.02, subdivisions 16 and 17, respectively, including  
 2.35 any state costs of remedial actions, exceed 100 percent of the assessor's estimated market

3.1 value for the contaminated area, as determined under section 273.11, for property taxes  
 3.2 payable in the year in which the condemnation commenced.

3.3 Subd. 9. Public nuisance. "Public nuisance" means a public nuisance under  
 3.4 section 609.74.

3.5 Subd. 10. Public service corporation. "Public service corporation" means a  
 3.6 public utility; gas, electric, telephone, or cable communications company; cooperative  
 3.7 association; natural gas pipeline company; crude oil, or petroleum products pipeline  
 3.8 company; municipal utility; municipality when operating its municipally owned utilities;  
 3.9 or municipal power agency; as otherwise regulated by law, including but not limited to  
 3.10 chapters 216B, 237, 300, and 302A.

3.11 Subd. 11. Public use; public purpose. (a) "Public use" or "public purpose" means,  
 3.12 exclusively:

3.13 (1) the possession, occupation, ownership, and enjoyment of the land by the general  
 3.14 public, or by public agencies;

3.15 (2) the creation or functioning of a public service corporation; or

3.16 (3) mitigation of a blighted area, remediation of an environmentally contaminated  
 3.17 area, reduction of abandoned property, or removal of a public nuisance.

3.18 (b) The public benefits of economic development, including an increase in tax base,  
 3.19 tax revenues, employment, or general economic health, do not by themselves constitute  
 3.20 a public use or public purpose.

3.21 **Sec. 3. [117.027] CONDEMNATION FOR BLIGHT MITIGATION,**  
 3.22 **CONTAMINATION REMEDIATION.**

3.23 Subdivision 1. Nondilapidated buildings in areas of blight mitigation; absolute  
 3.24 necessity. In taking property to mitigate blight, a condemning authority must not take  
 3.25 nondilapidated buildings in the area unless it is absolutely necessary in order to remove  
 3.26 the dilapidated buildings.

3.27 Subd. 2. Uncontaminated property in environmental contamination  
 3.28 remediation areas; absolute necessity. In taking property to remediate environmental  
 3.29 contamination, a condemning authority must not take uncontaminated parcels in the area  
 3.30 unless it is absolutely necessary in order to complete remediation of the contaminated area.

3.31 Subd. 3. Contribution to condition by developer disallowed. If a developer  
 3.32 involved in the redevelopment of the project area contributed to the blight or environmental  
 3.33 contamination within the project area, the condition contributed to by the developer must  
 3.34 not be used in the determination of blight or environmental contamination.

4.1 **Sec. 4. [117.031] ATTORNEY FEES.**

4.2 (a) If the final judgment or award for damages, as determined at any level in the  
 4.3 eminent domain process or by the parties themselves, is more than 20 percent greater than  
 4.4 the last written offer of compensation made by the condemning authority prior to the  
 4.5 filing of the petition, the court shall award the owner reasonable attorney fees, litigation  
 4.6 expenses, appraisal fees, other experts fees, and other related costs in addition to other  
 4.7 compensation and fees authorized by this section.

4.8 (b) In any case where the court determines that a taking is not for a public use or  
 4.9 is unlawful, the court shall award the owner reasonable attorney fees and other related  
 4.10 expenses, fees, and costs in addition to other compensation and fees authorized by this  
 4.11 section.

4.12 **Sec. 5. Minnesota Statutes 2004, section 117.075, subdivision 1, is amended to read:**

4.13 **Subdivision 1. Hearing on taking; evidentiary standard.** (a) Upon proof being  
 4.14 filed of the service of such notice, the court, at the time and place therein fixed or to which  
 4.15 the hearing may be adjourned, shall hear all competent evidence offered for or against the  
 4.16 granting of the petition, regulating the order of proof as it may deem best.

4.17 (b) If the taking is for the mitigation of a blighted area, remediation of an  
 4.18 environmentally contaminated area, reducing abandoned property, or removing a  
 4.19 public nuisance, then, notwithstanding any other provision of general or special law, a  
 4.20 condemning authority must show by clear and convincing evidence to the district court  
 4.21 that the taking is necessary and for the designated public use.

4.22 (c) In any appeal of the district courts determination of whether the taking is  
 4.23 necessary and for a public use, the court of appeals must review the district court's  
 4.24 determination of facts and law de novo.

4.25 **Sec. 6. [117.186] COMPENSATION FOR LOSS OF GOING CONCERN.**

4.26 **Subdivision 1. Going concern defined.** For purposes of this section, "going  
 4.27 concern" means the benefits that accrue to a business or trade as a result of its location,  
 4.28 reputation for dependability, skill or quality, customer base, good will, or any other  
 4.29 circumstances resulting in probable retention of old or acquisition of new patronage.

4.30 **Subd. 2. Compensation for loss of going concern.**

4.31 If a business or trade is destroyed by a taking, the owner shall be compensated for  
 4.32 loss of going concern, unless the condemning authority establishes any of the following  
 4.33 by clear and convincing evidence:

4.34 (1) the loss is not caused by the taking of the property or the injury to the remainder;

5.1 (2) the loss can be reasonably prevented by relocating the business or trade in the  
5.2 same or a similar and reasonably suitable location as the property that was taken, or by  
5.3 taking steps and adopting procedures that a reasonably prudent person of a similar age  
5.4 and under similar conditions as the owner, would take and adopt in preserving the going  
5.5 concern of the business or trade; or

5.6 (3) compensation for the loss of going concern will be duplicated in the  
5.7 compensation otherwise awarded to the owner.

5.8

5.9 Subd. 3. Procedure. In all cases where an owner will seek compensation for loss of  
5.10 going concern, the damages, if any, shall in the first instance be determined and reported  
5.11 by the commissioners under section 117.105 as part of the compensation due to the  
5.12 owner. The owner shall notify the condemning authority of the owner's intent to claim  
5.13 compensation for loss of going concern no later than 30 days prior to the commissioner's  
5.14 hearing. The commissioner's decision regarding any award for loss of going concern may  
5.15 be appealed by any party in accordance with section 117.145.

5.16 **Sec. 7. [117.187] MINIMUM COMPENSATION.**

5.17 When an owner must relocate, the amount of damages payable, at a minimum, must  
5.18 be sufficient for an owner to purchase a similar house or building of equivalent size in  
5.19 the community and not less than the condemning authority's payment or deposit under  
5.20 section 117.042.

5.21 **Sec. 8. [117.188] LIMITATIONS.**

5.22 The condemning authority may not require the owner to accept as part of the  
5.23 compensation due any substitute or replacement property. Nor shall the condemning  
5.24 authority require the owner to accept the return of property acquired or any portion thereof.

5.25 **Sec. 9. [117.189] PUBLIC SERVICE CORPORATION EXCEPTION.**

5.26 Sections 117.031, 117.186, 117.187, and 117.188 do not apply to public service  
5.27 corporations.

5.28 **Sec. 10. [117.1905] PUBLIC HEARING.**

5.29 Subdivision 1. Definitions. (a) For the purposes of this section, "local government"  
5.30 means the elected governing body of a statutory or home rule charter city, county, or  
5.31 township.

6.1 (b) For the purposes of this section, "agency" means any subdivision, agency,  
6.2 authority, or other entity of the local government, including a port authority, economic  
6.3 development authority, housing and redevelopment authority, or other similar entity  
6.4 established under general or special law.

6.5 Subd. 2. Public hearing; vote by local government governing body. Before a  
6.6 local government or agency acquires property by the exercise of the power of eminent  
6.7 domain, the local government must notify each property owner in writing of a public  
6.8 hearing on the proposed taking, post the public hearing information on the local  
6.9 government's Web site, if any, and publish notice of the public hearing in the official  
6.10 newspaper. Notice must be provided at least 30 days but not more than 60 days before the  
6.11 hearing. Any interested person must be allowed reasonable time to present testimony at  
6.12 the public hearing. The proceedings of the hearing must be recorded and available to the  
6.13 public for review and comment at reasonable times and a reasonable place. At the next  
6.14 regular meeting of the local government that is at least 30 days after the public hearing, the  
6.15 local government must vote on the question of whether to authorize the local government  
6.16 or agency to use eminent domain to acquire the property.

6.17 Sec. 11. REVISOR'S INSTRUCTION.

6.18 The revisor shall change the phrase "right of eminent domain" where found in  
6.19 Minnesota Statutes and Minnesota Rules to "power of eminent domain."

6.20 Sec. 12. EFFECTIVE DATE.

6.21 This act is effective the day following final enactment and applies to condemnation  
6.22 proceedings commenced on or after March 1, 2006.

**Senators Bakk, Kiscaden, Bachmann, Chaudhary and Kubly introduced - -  
S.F. No. 2750: Referred to the Committee on Judiciary.**

A bill for an act  
relating to eminent domain; defining public use or purpose; prohibiting the use  
of eminent domain for economic development; requiring clear and convincing  
evidence for certain takings; providing for attorney fees and other additional  
elements of compensation; making other changes in the exercise of eminent  
domain; amending Minnesota Statutes 2004, sections 117.025; 117.075,  
subdivision 1; proposing coding for new law in Minnesota Statutes, chapter 117.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

**Section 1. [117.012] PREEMPTION; NO IMPLIED AUTHORITY.**

Subdivision 1. Preemption. Notwithstanding any other provision of law, including any charter provision, ordinance, statute, or special law, all condemning authorities, including home rule charter cities and all other political subdivisions of the state, must exercise the power of eminent domain in accordance with the provisions of this chapter, including all procedures, definitions, remedies, and limitations. Additional procedures, remedies, or limitations that do not deny or diminish the substantive and procedural rights and protections of owners under this chapter may be provided by other law, ordinance, or charter.

Subd. 2. No implied authority. The power of eminent domain shall not be implied. In order to exercise the power of eminent domain, the condemning authority must have an express grant of eminent domain authority.

Sec. 2. Minnesota Statutes 2004, section 117.025, is amended to read:

**117.025 DEFINITIONS.**

Subdivision 1. **Words, terms, and phrases.** ~~Unless the language or context clearly indicates that a different meaning is intended,~~ For the purposes of this chapter and any

2.1 other general or special law authorizing the exercise of the power of eminent domain, the  
 2.2 words, terms, and phrases defined in this section have the meanings given them.

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

2.6 Subd. 3. **Owner.** "Owner" includes all persons ~~interested in such~~ with any interest  
 2.7 in the property subject to a taking, whether as proprietors, tenants, life estate holders,  
 2.8 encumbrancers, beneficial interest holders, or otherwise.

2.9 Subd. 4. **Condemning authority.** "Condemning authority" means any person or  
 2.10 entity with the power of eminent domain.

2.11 Subd. 5. **Abandoned property.** "Abandoned property" means property not occupied  
 2.12 by a person with a legal or equitable right to occupy it and for which the condemning  
 2.13 authority is unable to identify and contact the owner despite making reasonable efforts.

2.14 Subd. 6. **Blighted area.** (a) "Blighted area" means, exclusively, at the time of  
 2.15 condemnation, an area:

2.16 (1) that is zoned and used for urban use; and

2.17 (2) where more than 50 percent of the buildings are dilapidated.

2.18 Subd. 7. **Dilapidated building.** "Dilapidated building" means, exclusively, a  
 2.19 building:

2.20 (1) that was inspected by the appropriate local government and cited for one or more  
 2.21 building code violations at least 12 months before the condemnation is commenced;

2.22 (2) in which the building code violations cited have not been remedied, as  
 2.23 determined by at least one reinspection that finds noncompliance after the due date for  
 2.24 compliance with an order to correct a building code violation; and

2.25 (3) that, as of the date the condemnation is commenced, is unfit for human use  
 2.26 because it is unsafe, structurally unsound, or lacking in basic equipment.

2.27 Subd. 8. **Environmentally contaminated area.** "Environmentally contaminated  
 2.28 area" means an area:

2.29 (1) that contains, on or below more than 50 percent of its surface area, any substance  
 2.30 or substances defined, regulated, or listed as a hazardous substance, hazardous material,  
 2.31 hazardous waste, toxic waste, pollutant, contaminant, or toxic substance, or identified as  
 2.32 hazardous to human health or the environment under state or federal law or regulation; and

2.33 (2) for which the costs of investigation, monitoring and testing, and remedial action  
 2.34 or removal, as defined in section 115B.02, subdivisions 16 and 17, respectively, including  
 2.35 any state costs of remedial actions, exceed 100 percent of the assessor's estimated market



3.1 value for the contaminated area, as determined under section 273.11, for property taxes  
3.2 payable in the year in which the condemnation commenced.

3.3 Subd. 9. Public nuisance. "Public nuisance" means a public nuisance under  
3.4 section 609.74.

3.5 Subd. 10. Public service corporation. "Public service corporation" means a  
3.6 public utility; gas, electric, telephone, or cable communications company; cooperative  
3.7 association; natural gas pipeline company; crude oil, or petroleum products pipeline  
3.8 company; municipal utility; municipality when operating its municipally owned utilities;  
3.9 or municipal power agency; as otherwise regulated by law, including but not limited to  
3.10 chapters 216B, 237, 300, and 302A.

3.11 Subd. 11. Public use; public purpose. (a) "Public use" or "public purpose" means,  
3.12 exclusively:

(1) the possession, occupation, ownership, and enjoyment of the land by the general  
3.14 public, or by public agencies;

3.15 (2) the creation or functioning of a public service corporation; or

3.16 (3) mitigation of a blighted area, remediation of an environmentally contaminated  
3.17 area, reduction of abandoned property, or removal of a public nuisance.

3.18 (b) The public benefits of economic development, including an increase in tax base,  
3.19 tax revenues, employment, or general economic health, do not by themselves constitute  
3.20 a public use or public purpose.

3.21 **Sec. 3. [117.027] CONDEMNATION FOR BLIGHT MITIGATION,**  
3.22 **CONTAMINATION REMEDIATION.**

3.23 Subdivision 1. Nondilapidated buildings in areas of blight mitigation; absolute  
3.24 necessity. In taking property to mitigate blight, a condemning authority must not take  
3.25 nondilapidated buildings in the area unless it is absolutely necessary in order to remove  
3.26 the dilapidated buildings.

3.27 Subd. 2. Uncontaminated property in environmental contamination  
3.28 remediation areas; absolute necessity. In taking property to remediate environmental  
3.29 contamination, a condemning authority must not take uncontaminated parcels in the area  
3.30 unless it is absolutely necessary in order to complete remediation of the contaminated area.

3.31 Subd. 3. Contribution to condition by developer disallowed. If a developer  
3.32 involved in the redevelopment of the project area contributed to the blight or environmental  
3.33 contamination within the project area, the condition contributed to by the developer must  
3.34 not be used in the determination of blight or environmental contamination.

4.1           Sec. 4. **[117.031] ATTORNEY FEES.**

4.2           (a) If the final judgment or award for damages, as determined at any level in the  
4.3 eminent domain process or by the parties themselves, is more than 20 percent greater than  
4.4 the last written offer of compensation made by the condemning authority prior to the  
4.5 filing of the petition, the court shall award the owner reasonable attorney fees, litigation  
4.6 expenses, appraisal fees, other experts fees, and other related costs in addition to other  
4.7 compensation and fees authorized by this section.

4.8           (b) In any case where the court determines that a taking is not for a public use or  
4.9 is unlawful, the court shall award the owner reasonable attorney fees and other related  
4.10 expenses, fees, and costs in addition to other compensation and fees authorized by this  
4.11 section.

4.12           Sec. 5. Minnesota Statutes 2004, section 117.075, subdivision 1, is amended to read:

4.13           Subdivision 1. **Hearing on taking; evidentiary standard.** (a) Upon proof being  
4.14 filed of the service of such notice, the court, at the time and place therein fixed or to which  
4.15 the hearing may be adjourned, shall hear all competent evidence offered for or against the  
4.16 granting of the petition, regulating the order of proof as it may deem best.

4.17           (b) If the taking is for the mitigation of a blighted area, remediation of an  
4.18 environmentally contaminated area, reducing abandoned property, or removing a  
4.19 public nuisance, then, notwithstanding any other provision of general or special law, a  
4.20 condemning authority must show by clear and convincing evidence to the district court  
4.21 that the taking is necessary and for the designated public use.

4.22           (c) In any appeal of the district courts determination of whether the taking is  
4.23 necessary and for a public use, the court of appeals must review the district court's  
4.24 determination of facts and law de novo.

4.25           Sec. 6. **[117.186] COMPENSATION FOR LOSS OF GOING CONCERN.**

4.26           Subdivision 1. **Going concern defined.** For purposes of this section, "going  
4.27 concern" means the benefits that accrue to a business or trade as a result of its location,  
4.28 reputation for dependability, skill or quality, customer base, good will, or any other  
4.29 circumstances resulting in probable retention of old or acquisition of new patronage.

4.30           Subd. 2. **Compensation for loss of going concern.**

4.31           If a business or trade is destroyed by a taking, the owner shall be compensated for  
4.32 loss of going concern, unless the condemning authority establishes any of the following  
4.33 by clear and convincing evidence:

4.34           (1) the loss is not caused by the taking of the property or the injury to the remainder;

5.1 (2) the loss can be reasonably prevented by relocating the business or trade in the  
5.2 same or a similar and reasonably suitable location as the property that was taken, or by  
5.3 taking steps and adopting procedures that a reasonably prudent person of a similar age  
5.4 and under similar conditions as the owner, would take and adopt in preserving the going  
5.5 concern of the business or trade; or

5.6 (3) compensation for the loss of going concern will be duplicated in the  
5.7 compensation otherwise awarded to the owner.

5.8

5.9 Subd. 3. Procedure. In all cases where an owner will seek compensation for loss of  
5.10 going concern, the damages, if any, shall in the first instance be determined and reported  
5.11 by the commissioners under section 117.105 as part of the compensation due to the  
5.12 owner. The owner shall notify the condemning authority of the owner's intent to claim  
5.13 compensation for loss of going concern no later than 30 days prior to the commissioner's  
5.14 hearing. The commissioner's decision regarding any award for loss of going concern may  
5.15 be appealed by any party in accordance with section 117.145.

5.16 **Sec. 7. [117.187] MINIMUM COMPENSATION.**

5.17 When an owner must relocate, the amount of damages payable, at a minimum, must  
5.18 be sufficient for an owner to purchase a similar house or building of equivalent size in  
5.19 the community and not less than the condemning authority's payment or deposit under  
5.20 section 117.042.

5.21 **Sec. 8. [117.188] LIMITATIONS.**

5.22 The condemning authority may not require the owner to accept as part of the  
5.23 compensation due any substitute or replacement property. Nor shall the condemning  
5.24 authority require the owner to accept the return of property acquired or any portion thereof.

5.25 **Sec. 9. [117.189] PUBLIC SERVICE CORPORATION EXCEPTION.**

5.26 Sections 117.031, 117.186, 117.187, and 117.188 do not apply to public service  
5.27 corporations.

5.28 **Sec. 10. [117.1905] PUBLIC HEARING.**

5.29 Subdivision 1. Definitions. (a) For the purposes of this section, "local government"  
5.30 means the elected governing body of a statutory or home rule charter city, county, or  
5.31 township.

6.1 (b) For the purposes of this section, "agency" means any subdivision, agency,  
6.2 authority, or other entity of the local government, including a port authority, economic  
6.3 development authority, housing and redevelopment authority, or other similar entity  
6.4 established under general or special law.

6.5 Subd. 2. Public hearing; vote by local government governing body. Before a  
6.6 local government or agency acquires property by the exercise of the power of eminent  
6.7 domain, the local government must notify each property owner in writing of a public  
6.8 hearing on the proposed taking, post the public hearing information on the local  
6.9 government's Web site, if any, and publish notice of the public hearing in the official  
6.10 newspaper. Notice must be provided at least 30 days but not more than 60 days before the  
6.11 hearing. Any interested person must be allowed reasonable time to present testimony at  
6.12 the public hearing. The proceedings of the hearing must be recorded and available to the  
6.13 public for review and comment at reasonable times and a reasonable place. At the next  
6.14 regular meeting of the local government that is at least 30 days after the public hearing, the  
6.15 local government must vote on the question of whether to authorize the local government  
6.16 or agency to use eminent domain to acquire the property.

6.17 Sec. 11. REVISOR'S INSTRUCTION.

6.18 The revisor shall change the phrase "right of eminent domain" where found in  
6.19 Minnesota Statutes and Minnesota Rules to "power of eminent domain."

6.20 Sec. 12. EFFECTIVE DATE.

6.21 This act is effective the day following final enactment and applies to condemnation  
6.22 proceedings commenced on or after March 1, 2006.

1.1 Senator ..... moves to amend S.F. No. 2750 as follows:

1.2 Delete everything after the enacting clause and insert:

1.3 "Section 1. Minnesota Statutes 2004, section 117.036, is amended to read:

1.4 **117.036 APPRAISAL AND NEGOTIATION REQUIREMENTS**

1.5 ~~APPLICABLE TO ACQUISITION OF PROPERTY FOR TRANSPORTATION~~  
1.6 ~~PURPOSES.~~

1.7 Subdivision 1. **Application.** This section applies to the acquisition of property  
1.8 ~~for public highways, streets, roads, alleys, airports, mass transit facilities, or for other~~  
1.9 ~~transportation facilities or purposes under this chapter.~~

1.10 Subd. 2. **Appraisal.** (a) Before commencing an eminent domain proceeding under  
1.11 this chapter, the acquiring authority must obtain at least one appraisal for the property  
1.12 proposed to be acquired. In making the appraisal, the appraiser must confer with one or  
1.13 more of the fee owners or contract purchasers of the property, if reasonably possible. ~~At~~  
1.14 ~~least 20~~ The acquiring authority must provide the fee owner or contract purchaser with  
1.15 a copy of the appraisal at the time an offer is made, but no later than 60 days before  
1.16 presenting a petition under section 117.055, the acquiring authority must provide the  
1.17 owner with a copy of the appraisal and inform the owner of the owner's fee owner or  
1.18 contract purchaser of the right to obtain an appraisal under this section. Upon request,  
1.19 the acquiring authority must make available to the fee owner or contract purchaser all  
1.20 appraisals of the property.

1.21 (b) The fee owner or contract purchaser may obtain an appraisal by a qualified  
1.22 appraiser of the property proposed to be acquired. The fee owner or contract purchaser  
1.23 is entitled to reimbursement for the reasonable costs of the appraisal from the acquiring  
1.24 authority up to a maximum of \$1,500 ~~within 30 days after the~~ for single family and  
1.25 two-family residential property, agricultural property, and minimum damage acquisitions  
1.26 and \$5,000 for other types of property, provided that the fee owner or contract purchaser  
1.27 submits to the acquiring authority the information necessary for reimbursement, provided

2.1 ~~that the owner does so~~ including a copy of the fee owner's or contract purchaser's  
 2.2 appraisal, within 60 90 days after the owner receives receiving the appraisal from the  
 2.3 authority under paragraph (a) and at least five days before a condemnation commissioners'  
 2.4 hearing. For purposes of this paragraph, a "minimum damage acquisition" means an  
 2.5 interest in property that a qualified person with appraisal knowledge indicates can be  
 2.6 acquired for a cost of \$10,000 or less. For purposes of this paragraph, "agricultural  
 2.7 property" has the meaning given in section 583.22, subdivision 2.

2.8 (c) The acquiring authority must pay the reimbursement to the fee owner or contract  
 2.9 purchaser within 30 days after receiving a copy of the appraisal and the reimbursement  
 2.10 information. Upon agreement between the acquiring authority and either the fee owner  
 2.11 or contract purchaser, the acquiring authority may pay the reimbursement directly to  
 2.12 the appraiser.

2.13 **Subd. 3. Negotiation.** In addition to the appraisal requirements under subdivision 2,  
 2.14 before commencing an eminent domain proceeding, the acquiring authority must make a  
 2.15 good faith attempt to negotiate personally with the fee owner or contract purchaser of the  
 2.16 property in order to acquire the property by direct purchase instead of the use of eminent  
 2.17 domain proceedings. In making this negotiation, the acquiring authority must consider  
 2.18 the appraisals in its possession, including any appraisal obtained and furnished by the fee  
 2.19 owner or contract purchaser if available, and other information that may be relevant to a  
 2.20 determination of damages under this chapter.

2.21 **Subd. 4. Use of appraisal at commissioners' hearing.** An appraisal must not be  
 2.22 used or considered in a condemnation commissioners' hearing, nor may the appraiser who  
 2.23 prepared the appraisal testify, unless a copy of the appraiser's written report is provided to  
 2.24 the opposing party at least five days before the hearing.

2.25 **Sec. 2. [117.0412] LOCAL GOVERNMENT PUBLIC HEARING**  
 2.26 **REQUIREMENTS.**

2.27 **Subdivision 1. Definitions.** (a) For the purposes of this section:

2.28 (1) "local government" means the elected governing body of a statutory or home  
 2.29 rule charter city, county, or township; and

2.30 (2) "local government agency" means a subdivision, agency, authority, or other entity  
 2.31 of the local government, including a port authority, economic development authority,  
 2.32 housing and redevelopment authority, or other similar entity established under law.

2.33 **Subd. 2. Public hearing; vote by local government governing body.** (a) Before a  
 2.34 local government or local government agency commences an eminent domain proceeding  
 2.35 under section 117.055, a public hearing must be held as provided in this section. The local

3.1 government must notify each owner of property that may be acquired in writing of the  
 3.2 public hearing on the proposed taking, post the public hearing information on the local  
 3.3 government’s Web site, if any, and publish notice of the public hearing in a newspaper  
 3.4 of general circulation in the local government’s jurisdiction. Notice must be provided at  
 3.5 least 30 days but not more than 60 days before the hearing.

3.6 (b) Any interested person must be allowed reasonable time to present testimony at  
 3.7 the public hearing. The proceedings of the hearing must be recorded and available to the  
 3.8 public for review and comment at reasonable times and a reasonable place. At the next  
 3.9 regular meeting of the local government that is at least 30 days after the public hearing, the  
 3.10 local government must vote on the question of whether to authorize the local government  
 3.11 or local government agency to use eminent domain to acquire the property.

3.12 Sec. 3. Minnesota Statutes 2004, section 117.055, is amended to read:

3.13 **117.055 PETITION AND NOTICE.**

3.14 Subdivision 1. **Petition.** In all cases a petition, describing the desired land, stating by  
 3.15 whom and for what purposes it is proposed to be taken, and giving the names of all persons  
 3.16 appearing of record or known to the petitioner to be the owners thereof shall be presented  
 3.17 to the district court of the county in which the land is situated praying for the appointment  
 3.18 of commissioners to appraise the damages which may be occasioned by such taking.

3.19 Subd. 2. **Notice.** (a) Notice of the objects of the petition and of the time and place of  
 3.20 presenting the same shall be served at least 20 days before such time of presentation upon  
 3.21 all persons named in the petition as owners as defined in section 117.025, subdivision 3,  
 3.22 and upon all occupants of such land in the same manner as a summons in a civil action.

3.23 (b) The notice must state that:

3.24 (1) a party wishing to challenge the public purpose, necessity, or authority for a  
 3.25 taking must appear at the court hearing and state the objection; and

3.26 (2) a court order approving the public purpose, necessity, and authority for the taking  
 3.27 is final unless an appeal is brought within 60 days after service of the order on the party.

3.28 (c) If any such owner be not a resident of the state, or the owner’s place of residence  
 3.29 be unknown to the petitioner, upon the filing of an affidavit of the petitioner or the  
 3.30 petitioner’s agent or attorney, stating that the petitioner believes that such owner is not  
 3.31 a resident of the state, and that the petitioner has mailed a copy of the notice to the  
 3.32 owner at the owner’s place of residence, or that after diligent inquiry the owner’s place  
 3.33 of residence cannot be ascertained by the affiant, then service may be made upon such  
 3.34 owner by three weeks’ published notice. If the state be an owner, the notice shall be  
 3.35 served upon the attorney general. Any owner not served as herein provided shall not be  
 3.36 bound by such proceeding except upon voluntarily appearing therein. Any owner shall

4.1 be furnished a right-of-way map or plat of all that part of land to be taken upon written  
4.2 demand, provided that the petitioner shall have ten days from the receipt of the demand  
4.3 within which to furnish the same. Any plans or profiles which the petitioner has shall be  
4.4 made available to the owner for inspection.

4.5 Sec. 4. Minnesota Statutes 2004, section 117.075, is amended by adding a subdivision  
4.6 to read:

4.7 Subd. 1a. **Appeal of order.** A party wishing to challenge the public purpose,  
4.8 necessity, or authority for a taking must appear at the court hearing required by subdivision  
4.9 1 and state the objection. Failure to appear and object is deemed a waiver of any objection.  
4.10 A court order approving the public purpose, necessity, and authority for the taking is final  
4.11 unless an appeal is brought within 60 days after service of the order on the party.

4.12 Sec. 5. Minnesota Statutes 2004, section 117.075, is amended by adding a subdivision  
4.13 to read:

4.14 Subd. 1b. **Attorney fees.** If the court determines that a taking is not for a public  
4.15 purpose or is unlawful, the court shall award the owner reasonable attorney fees.

4.16 Sec. 6. Minnesota Statutes 2004, section 117.085, is amended to read:

4.17 **117.085 COMMISSIONERS, POWERS, DUTIES.**

4.18 The commissioners, having been duly sworn and qualified according to law, shall  
4.19 meet as directed by the order of appointment and hear the allegations and proofs of all  
4.20 persons interested touching the matters to them committed. They may adjourn from time  
4.21 to time and from place to place within the county, giving oral notice to those present of  
4.22 the time and place of their next meeting. All testimony taken by them shall be given  
4.23 publicly, under oath, and in their presence. They shall view the premises, and any of  
4.24 them may subpoena witnesses, which shall be served as subpoenas in civil actions are  
4.25 served, and at the cost of the parties applying therefor. If deemed necessary, they may  
4.26 require the petitioner or owner to furnish for their use maps, plats, and other information  
4.27 which the petitioner or owner may have showing the nature, character, and extent of the  
4.28 proposed undertaking and the situation of lands desired therefor. In proper cases they may  
4.29 reserve to the owner a right-of-way or other privilege in or over the land taken, or attach  
4.30 reasonable conditions to such taking in addition to the damages given or they may make  
4.31 an alternative award, conditioned upon the granting or withholding of the right specified.  
4.32 Without unreasonable delay they shall make a separate assessment and award of the  
4.33 damages which in their judgment will result to each of the owners of the land by reason  
4.34 of such taking and report the same to the court. The commissioners shall not reduce the  
4.35 amount of the damages awarded because the land being taken is, at the time of the taking,



5.1 valued under section 273.111, designated as an agricultural preserve under chapter 473H.  
5.2 The commissioners, in all such proceedings, may in their discretion allow and show  
5.3 separately in addition to the award of damages, reasonable appraisal fees not to exceed a  
5.4 total of ~~\$500~~ \$1,500 for single family and two-family residential property, agricultural  
5.5 property, and minimum damage acquisitions and \$5,000 for other types of property. Upon  
5.6 request of an owner the commissioners shall show in their report the amount of the award  
5.7 of damages which is to reimburse the owner and tenant or lessee for the value of the land  
5.8 taken, and the amount of the award of damages, if any, which is to reimburse the owner  
5.9 and tenant or lessee for damages to the remainder involved, whether or not described in  
5.10 the petition. The amounts awarded to each person shall also be shown separately. The  
5.11 commissioners shall, if requested by any party, make an express finding of the estimated  
5.12 cost of removal and remedial actions that will be necessary on the taken property because  
5.13 of existing environmental contamination.

5.14 **Sec. 7. [117.186] COMPENSATION FOR LOSS OF GOING CONCERN.**

5.15 **Subdivision 1. Definitions.** For purposes of this section:

5.16 (1) "going concern" means the benefits that accrue to a business or trade as a result  
5.17 of its location, reputation for dependability, skill or quality, customer base, good will, or  
5.18 any other circumstances resulting in the probable retention of old or acquisition of new  
5.19 patronage; and

5.20 (2) "owner" has the meaning given in section 117.025 and includes a lessee who  
5.21 operates a business on real property that is the subject of an eminent domain proceeding.

5.22 **Subd. 2. Compensation.** In all eminent domain proceedings, the owner of a business  
5.23 or trade must be compensated for the loss of a going concern if the owner establishes that:

5.24 (1) the business or trade has been destroyed as a direct result of the taking;

5.25 (2) the loss cannot be reasonably prevented by relocating the business or trade in the  
5.26 same or a similar and reasonably suitable location as the property that was taken, or by  
5.27 taking steps and adopting procedures that a reasonably prudent person of a similar age  
5.28 and under similar conditions as the owner would take and adopt in preserving the going  
5.29 concern of the business or trade; and

5.30 (3) compensation for the loss of going concern will not be duplicated in the  
5.31 compensation otherwise awarded to the owner of the business or trade.

5.32 **Subd. 3. Procedure.** In all cases where an owner seeks compensation for loss  
5.33 of a going concern, the court must determine, upon motion by the owner, whether the  
5.34 going concern has been taken. If the court determines that there is a taking of the going  
5.35 concern, any damages must be determined by the commissioners under section 117.105

6.1 and must be reported in the award of the commissioners separate from the award of just  
 6.2 compensation for the real property taken. An award for loss of going concern may be  
 6.3 appealed by any party in accordance with section 117.145.

6.4 **Sec. 8. [117.187] PUBLIC SERVICE CORPORATION EXCEPTIONS.**

6.5 Sections 117.075, subdivision 1b, and 117.186, do not apply to a public utility; gas,  
 6.6 electric, telephone, or cable communications company; cooperative association; natural  
 6.7 gas pipeline company; crude oil, or petroleum products pipeline company; municipal  
 6.8 utility; municipality when operating its municipally owned utilities; or municipal power  
 6.9 agency. "Public service corporation" also means a municipality or public corporation  
 6.10 when operating an airport under chapter 360 or 473, a common carrier, a watershed  
 6.11 district, or a drainage authority.

6.12 Sec. 9. Minnesota Statutes 2004, section 117.51, is amended to read:

6.13 **117.51 COOPERATION WITH FEDERAL AUTHORITIES.**

6.14 In all acquisitions undertaken by any acquiring authority and in all voluntary  
 6.15 rehabilitation carried out by a person pursuant to acquisition or as a consequence thereof,  
 6.16 the acquiring authority shall cooperate to the fullest extent with federal departments and  
 6.17 agencies, and it shall take all necessary action in order to insure, to the maximum extent  
 6.18 possible, federal financial participation in any and all phases of acquisition, including the  
 6.19 provision of relocation assistance, services, payments and benefits to displaced persons.  
 6.20 ~~An acquiring authority may consider reimbursing up to \$50,000 in reestablishment~~  
 6.21 ~~expenses of a displaced business.~~

6.22 Sec. 10. Minnesota Statutes 2004, section 117.52, subdivision 1, is amended to read:

6.23 Subdivision 1. **Lack of federal funding.** In all acquisitions undertaken by any  
 6.24 acquiring authority and in all voluntary rehabilitation carried out by a person pursuant  
 6.25 to acquisition or as a consequence thereof, in which, due to the lack of federal financial  
 6.26 participation, relocation assistance, services, payments and benefits under the Uniform  
 6.27 Relocation Assistance and Real Property Acquisition Policies Act of 1970, United States  
 6.28 Code, title 42, sections 4601 to 4655, as amended by the Surface Transportation and  
 6.29 Uniform Relocation Assistance Act of 1987, Statutes at Large, volume 101, pages 246  
 6.30 to 256 (1987), are not available, the acquiring authority, as a cost of acquisition, shall  
 6.31 provide all relocation assistance, services, payments and benefits required by the Uniform  
 6.32 Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended by  
 6.33 the Surface Transportation and Uniform Relocation Assistance Act of 1987, and those  
 6.34 regulations adopted pursuant thereto, and either (1) in effect as of ~~July 1, 1988~~ January 1,  
 6.35 2006, or (2) becoming effective after ~~July 1, 1988~~ January 1, 2006, following a public

7.1 hearing and comment. Comments received by an acquiring authority within 30 days after  
 7.2 the public hearing must be reviewed and a written response provided to the individual or  
 7.3 organization who initiated the comment. The response and comments may be addressed in  
 7.4 another public hearing by the acquiring authority before approval.

7.5 Sec. 11. Minnesota Statutes 2004, section 117.52, is amended by adding a subdivision  
 7.6 to read:

7.7 Subd. 1a. Reestablishment costs limit. For purposes of relocation benefits paid by  
 7.8 the acquiring authority in accordance with this section, the provisions of Code of Federal  
 7.9 Regulations, title 49, section 24.304, with respect to reimbursement of reestablishment  
 7.10 expenses for nonresidential moves are applicable, except that the acquiring authority shall  
 7.11 reimburse the displaced business for expenses actually incurred up to a maximum of  
 7.12 \$50,000.

7.13 Sec. 12. Minnesota Statutes 2004, section 163.12, subdivision 1a, is amended to read:

7.14 Subd. 1a. **Petition, notice, and access to information.** (a) Upon passage of the  
 7.15 resolution specified in section 163.11, subdivision 2, a petition must be presented to the  
 7.16 district court of the county in which the land is located. The petition must describe each  
 7.17 tract of land through which the highway passes, state the purposes for which the land is  
 7.18 proposed to be taken, and list the names of all persons appearing of record or known to  
 7.19 the county to be the landowners.

7.20 (b) Notice of the objects of the petition and of the time and place of presenting the  
 7.21 notice must be served, together with a copy of the resolution, upon each occupant of  
 7.22 each tract of land through which the highway passes at least 20 days before the hearing  
 7.23 under subdivision 1b. If an owner is not a resident of the state, or the owner's place of  
 7.24 residence is unknown to the county, service may be made by three weeks' published  
 7.25 notice following the filing of an affidavit on behalf of the county by the county's agent or  
 7.26 attorney stating that the county:

7.27 (1) believes that the owner is not a resident of the state; and

7.28 (2) has either mailed a copy of the notice to the owner at the owner's last known  
 7.29 residence address or, after diligent inquiry, the owner's place of residence cannot be  
 7.30 ascertained by the county.

7.31 If the state is an owner, the notice must be served upon the attorney general. An owner  
 7.32 not served as provided in this subdivision is not bound by the proceeding, except if the  
 7.33 owner voluntarily appears in the proceeding.

7.34 (c) Within ten days of an owner's demand, the owner must be furnished a  
 7.35 right-of-way map or plat of all that part of the owner's land to be taken. Any applicable

8.1 plans or profiles that the county possesses must be made available to the owner for  
8.2 inspection.

8.3 (d) The notice must state that:

8.4 (1) a party wishing to challenge the public purpose, necessity, or authority for the  
8.5 taking must appear at the court hearing and state the objection; and

8.6 (2) a court order approving the public purpose, necessity, and authority for the taking  
8.7 is final unless an appeal is brought within 60 days after service of the order on the party.

8.8 Sec. 13. Minnesota Statutes 2004, section 163.12, subdivision 1b, is amended to read:

8.9 Subd. 1b. **Finding of necessity.** When proof of service of the notice required in  
8.10 subdivision 1a is filed with the court, the court shall hear all competent evidence offered  
8.11 for or against granting the petition at the time and place fixed in the notice or otherwise set  
8.12 by the court. On finding that the proposed taking is necessary and authorized by law the  
8.13 court shall order the proceedings to commence pursuant to the remaining provisions of  
8.14 this section. The court order finding the taking necessary and authorized by law is a final  
8.15 order and must be appealed within 60 days from its service on the party.

8.16 Sec. 14. Minnesota Statutes 2004, section 469.012, subdivision 1g, is amended to read:

8.17 Subd. 1g. **Get property; eminent domain.** (a) An authority may, within its area of  
8.18 operation, acquire real or personal property or any interest therein by gifts, grant, purchase,  
8.19 exchange, lease, transfer, bequest, devise, or otherwise, and by the exercise of the power  
8.20 of eminent domain, in the manner provided by chapter 117, acquire real property which it  
8.21 may deem necessary for its purposes, after the adoption by it of a resolution declaring that  
8.22 the acquisition of the real property is necessary:

8.23 (1) to eliminate one or more of the conditions found to exist in the resolution adopted  
8.24 pursuant to section 469.003 or to provide decent, safe, and sanitary housing for persons  
8.25 of low and moderate income; or

8.26 (2) to carry out a redevelopment project.

8.27 (b) Real property needed or convenient for a project may be acquired by the  
8.28 authority for the project by condemnation pursuant to this section and chapter 117.

8.29 ~~(c) Prior to adoption of a resolution authorizing acquisition of property by~~  
8.30 ~~condemnation, the governing body of the authority must hold a public hearing on the~~  
8.31 ~~proposed acquisition after published notice in a newspaper of general circulation in the~~  
8.32 ~~municipality, which must be made at least one time not less than ten days nor more than~~  
8.33 ~~30 days prior to the date of the hearing. The notice must reasonably describe the property~~  
8.34 ~~to be acquired and state that the purpose of the hearing is to consider acquisition by~~  
8.35 ~~exercise of the authority's powers of eminent domain. Not less than ten days before the~~  
8.36 ~~hearing, notice of the hearing must also be mailed to the owner of each parcel proposed~~

9.1 ~~to be acquired, but failure to give mailed notice or any defects in the notice does not~~  
9.2 ~~invalidate the acquisition. For the purpose of giving mailed notice, owners are determined~~  
9.3 ~~in accordance with section 429.031, subdivision 1, paragraph (a).~~

9.4 (d) (c) Property acquired by condemnation under this section may include any  
9.5 property devoted to a public use, whether or not held in trust, notwithstanding that the  
9.6 property may have been previously acquired by condemnation or is owned by a public  
9.7 utility corporation, because the public use in conformity with the provisions of sections  
9.8 469.001 to 469.047 shall be deemed a superior public use. Property devoted to a public  
9.9 use may be so acquired only if the governing body of the municipality has approved  
9.10 its acquisition by the authority.

9.11 (e) (d) An award of compensation shall not be increased by reason of any increase  
9.12 in the value of the real property caused by the assembly, clearance or reconstruction, or  
9.13 proposed assembly, clearance or reconstruction for the purposes of sections 469.001  
9.14 to 469.047 of the real property in an area.

9.15 Sec. 15. **[469.401] DEFINITIONS.**

9.16 Subdivision 1. Scope. For purposes of this section and section 469.402, the  
9.17 following terms have the meanings given to them.

9.18 Subd. 2. Abandoned. "Abandoned" means that at least 75 percent of a building's  
9.19 area has been substantially unoccupied for at least one year prior to the date of inclusion  
9.20 in a blighted area.

9.21 Subd. 3. Blighted area. (a) "Blighted area" means an area:

9.22 (1) that is zoned and used for urban use; and

9.23 (2) where more than 50 percent of the buildings are dilapidated.

9.24 Subd. 4. Dilapidated building. "Dilapidated building" means a building:

9.25 (1) that was inspected by the appropriate local government and cited for one or more  
9.26 building code violations at least 12 months before the condemnation is commenced;

9.27 (2) in which the building code violations cited have not been remedied, as  
9.28 determined by at least one reinspection that finds noncompliance after the due date for  
9.29 compliance with an order to correct a building code violation; and

9.30 (3) that is unfit for human use because it is unsafe, structurally unsound, or lacking  
9.31 in basic equipment.

9.32 Subd. 5. Environmentally contaminated area. "Environmentally contaminated  
9.33 area" means an area where the lots, parcels, or tracts contain buildings, soil, or ground  
9.34 or surface water that is contaminated by a substance defined, regulated, or listed as  
9.35 a hazardous substance, hazardous material, hazardous waste, toxic waste, pollutant,

10.1 contaminant, or toxic substance, or identified as hazardous to human health or the  
10.2 environment, under state or federal law or regulation, and that is eligible for federal,  
10.3 regional, or state contamination cleanup grant assistance.

10.4 Subd. 6. **Public nuisance.** "Public nuisance" has the meaning given in section  
10.5 609.74.

10.6 Sec. 16. **[469.402] LIMITATION ON USE OF EMINENT DOMAIN.**

10.7 Subdivision 1. **Limitation; transfer of property interest to private entity.** A  
10.8 condemning authority may not exercise the power of eminent domain under this chapter  
10.9 if the property interest to be acquired is intended to be sold, transferred, or otherwise  
10.10 conveyed to a person or nongovernmental entity without the power of eminent domain,  
10.11 unless the condemning authority finds that the use of eminent domain is necessary to  
10.12 accomplish one or more of the purposes in subdivision 2.

10.13 Subd. 2. **Exceptions.** (a) Notwithstanding subdivision 1, the condemning authority  
10.14 may exercise the power of eminent domain to acquire land for one or more of the  
10.15 following purposes:

10.16 (1) the ownership, possession, occupation, or enjoyment of the land by the general  
10.17 public or by public agencies or government entities;

10.18 (2) to remedy a public nuisance;

10.19 (3) to carry out a program to remedy or improve an environmentally contaminated  
10.20 area;

10.21 (4) to carry out a program to remedy or improve a blighted area;

10.22 (5) to facilitate development of housing for low or moderate income persons as  
10.23 defined under any federal, state, or local program;

10.24 (6) to acquire parcels of land necessary to complete a project, if the project consists  
10.25 of five parcels or less and all but one of the parcels necessary to complete the project were  
10.26 acquired by means other than eminent domain; or if the project consists of more than five  
10.27 parcels and at least 80 percent of the required parcels were acquired by means other  
10.28 than eminent domain; or

10.29 (7) subject to paragraph (b), for the public benefits of economic development,  
10.30 including an increase in tax base, tax revenues, employment, or general economic health.

10.31 (b) A condemning authority may exercise the power of eminent domain for  
10.32 economic development purposes under this chapter only if one or more of the following  
10.33 forms of financial assistance are present:

10.34 (1) a grant awarded by a state agency for economic development related purposes, if  
10.35 a single business receives \$200,000 or more of the grant proceeds;

11.1 (2) a grant award to local units of government or development authorities under  
11.2 sections 116J.551, 116J.559, 116J.571, and 116J.8731;

11.3 (3) a loan or the guaranty or purchase of a loan made by a state agency for economic  
11.4 development related purposes if a single business receives \$500,000 or more of the loan  
11.5 proceeds;

11.6 (4) a reduction, credit, or abatement of a tax assessed under chapter 297A or 290  
11.7 where the tax reduction, credit, or abatement applies to a geographic area smaller than the  
11.8 entire state and was granted for economic development related purposes; or

11.9 (5) an appropriation by the legislature to acquire or better property, in whole or in  
11.10 part, with the proceeds of state general obligation bonds authorized to be issued under  
11.11 article XI, section 5, clause (a) of the Minnesota Constitution.

11.12 Financial assistance does not include payments by the state of aids and credits under  
11.13 chapter 273 or 477A to a political subdivision.

11.14 Subd. 3. **Disclosure.** All applicants must indicate on applications for financial  
11.15 assistance described in subdivision 2, paragraph (b), whether the use of eminent domain  
11.16 may be necessary to acquire property for the project.

11.17 **Sec. 17. REVISOR'S INSTRUCTION.**

11.18 The revisor shall change the phrase "right of eminent domain" where found in  
11.19 Minnesota Statutes and Minnesota Rules to "power of eminent domain."

11.20 **Sec. 18. EFFECTIVE DATE.**

11.21 Except as otherwise provided, this act is effective January 1, 2007, and applies to  
11.22 condemnation proceedings commenced on or after that date."

11.23 Amend the title accordingly

1.1 Senator ..... moves to amend S.F. No. 2750 as follows:

1.2 Delete everything after the enacting clause and insert:

1.3 "Section 1. **[117.012] PREEMPTION; NO IMPLIED AUTHORITY.**

1.4 Subdivision 1. **Preemption.** Notwithstanding any other provision of law, including  
1.5 any charter provision, ordinance, statute, or special law, all condemning authorities,  
1.6 including home rule charter cities and all other political subdivisions of the state, must  
1.7 exercise the power of eminent domain in accordance with the provisions of this chapter,  
1.8 including all procedures, definitions, remedies, and limitations. Additional procedures,  
1.9 remedies, or limitations that do not deny or diminish the substantive and procedural rights  
1.10 and protections of owners under this chapter may be provided by other law, ordinance,  
1.11 or charter.

1.12 Subd. 2. **No implied authority.** The power of eminent domain shall not be implied.  
1.13 In order to exercise the power of eminent domain, the condemning authority must have an  
1.14 express grant of eminent domain authority.

1.15 Sec. 2. Minnesota Statutes 2004, section 117.025, is amended to read:

1.16 **117.025 DEFINITIONS.**

1.17 Subdivision 1. **Words, terms, and phrases.** ~~Unless the language or context clearly~~  
1.18 ~~indicates that a different meaning is intended,~~ For the purposes of this chapter and any  
1.19 other general or special law authorizing the exercise of the power of eminent domain, the  
1.20 words, terms, and phrases defined in this section have the meanings given them.

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

1.24 Subd. 3. **Owner.** "Owner" includes all persons ~~interested in such~~ with any interest  
1.25 in the property subject to a taking, whether as proprietors, tenants, life estate holders,  
1.26 encumbrancers, beneficial interest holders, or otherwise.



2.1 Subd. 4. **Condemning authority.** "Condemning authority" means a person or  
2.2 entity with the power of eminent domain.

2.3 Subd. 5. **Abandoned property.** "Abandoned property" means property not  
2.4 occupied by a person with a legal or equitable right to occupy the property and for which  
2.5 the condemning authority is unable to identify and contact the owner despite making  
2.6 reasonable efforts.

2.7 Subd. 6. **Blighted area.** (a) "Blighted area" means an area:

2.8 (1) that is zoned and used for urban use; and

2.9 (2) where more than 50 percent of the buildings are dilapidated.

2.10 Subd. 7. **Dilapidated building.** "Dilapidated building" means a building:

2.11 (1) that was inspected by the appropriate local government and cited for one or more  
2.12 building code violations at least 12 months before the condemnation is commenced;

2.13 (2) in which the building code violations cited have not been remedied, as  
2.14 determined by at least one reinspection that finds noncompliance after the due date for  
2.15 compliance with an order to correct a building code violation; and

2.16 (3) that, as of the date the condemnation is commenced, is unfit for human use  
2.17 because it is unsafe, structurally unsound, or lacking in basic equipment.

2.18 Subd. 8. **Environmentally contaminated area.** "Environmentally contaminated  
2.19 area" means an area:

2.20 (1) that contains, on or below more than 50 percent of its surface area, any substance  
2.21 defined, regulated, or listed as a hazardous substance, hazardous material, hazardous  
2.22 waste, toxic waste, pollutant, contaminant, or toxic substance, or identified as hazardous to  
2.23 human health or the environment under state or federal law or regulation; and

2.24 (2) for which the costs of investigation, monitoring and testing, and remedial action  
2.25 or removal, as defined in section 115B.02, subdivisions 16 and 17, respectively, including  
2.26 any state costs of remedial actions, exceed 100 percent of the assessor's estimated market  
2.27 value for the contaminated area, as determined under section 273.11, for property taxes  
2.28 payable in the year in which the condemnation commenced.

2.29 Subd. 9. **Public nuisance.** "Public nuisance" means a public nuisance under  
2.30 section 609.74.

2.31 Subd. 10. **Public service corporation.** "Public service corporation" means a  
2.32 public utility; gas, electric, telephone, or cable communications company; cooperative  
2.33 association; natural gas pipeline company; crude oil, or petroleum products pipeline  
2.34 company; municipal utility; municipality when operating its municipally owned utilities;  
2.35 or municipal power agency. Public service corporation also means a municipality or

3.1 public corporation when operating an airport under chapter 360 or 473, a common carrier,  
3.2 a watershed district, or a drainage authority.

3.3 **Subd. 11. Public use; public purpose.** (a) "Public use" or "public purpose" means,  
3.4 exclusively:

3.5 (1) the possession, occupation, ownership, and enjoyment of the land by the general  
3.6 public, or by public agencies;

3.7 (2) the creation or functioning of a public service corporation; or

3.8 (3) mitigation of a blighted area, remediation of an environmentally contaminated  
3.9 area, reduction of abandoned property, or removal of a public nuisance.

3.10 (b) The public benefits of economic development, including an increase in tax base,  
3.11 tax revenues, employment, or general economic health, do not by themselves constitute  
3.12 a public use or public purpose.

3.13 **Sec. 3. [117.027] CONDEMNATION FOR BLIGHT MITIGATION AND**  
3.14 **CONTAMINATION REMEDIATION.**

3.15 **Subdivision 1. Nondilapidated buildings in areas of blight mitigation; absolute**  
3.16 **necessity.** In taking property to mitigate blight, a condemning authority must not take  
3.17 nondilapidated buildings in the area unless it is absolutely necessary in order to remove  
3.18 the dilapidated buildings.

3.19 **Subd. 2. Uncontaminated property in environmental contamination**  
3.20 **remediation areas; absolute necessity.** In taking property to remediate environmental  
3.21 contamination, a condemning authority must not take uncontaminated parcels in the area  
3.22 unless it is absolutely necessary in order to complete remediation of the contaminated area.

3.23 **Subd. 3. Contribution to condition by developer disallowed.** If a developer  
3.24 involved in the redevelopment of the project area contributed to the blight or environmental  
3.25 contamination within the project area, the condition contributed to by the developer must  
3.26 not be used in the determination of blight or environmental contamination.

3.27 Sec. 4. Minnesota Statutes 2004, section 117.036, is amended to read:

3.28 **117.036 APPRAISAL AND NEGOTIATION REQUIREMENTS**  
3.29 **~~APPLICABLE TO ACQUISITION OF PROPERTY FOR TRANSPORTATION~~**  
3.30 **~~PURPOSES.~~**

3.31 **Subdivision 1. Application.** This section applies to the acquisition of property  
3.32 ~~for public highways, streets, roads, alleys, airports, mass transit facilities, or for other~~  
3.33 ~~transportation facilities or purposes~~ under this chapter.

3.34 **Subd. 2. Appraisal.** (a) Before commencing an eminent domain proceeding under  
3.35 this chapter, the acquiring authority must obtain at least one appraisal for the property

4.1 proposed to be acquired. In making the appraisal, the appraiser must confer with one or  
4.2 more of the fee owners or contract purchasers of the property, if reasonably possible. ~~At~~  
4.3 ~~least 20~~ The acquiring authority must provide the fee owner or contract purchaser with  
4.4 a copy of the appraisal at the time an offer is made, but no later than 60 days before  
4.5 presenting a petition under section 117.055, ~~the acquiring authority must provide the~~  
4.6 ~~owner with a copy of the appraisal and inform the owner of the owner's~~ fee owner or  
4.7 contract purchaser of the right to obtain an appraisal under this section. Upon request,  
4.8 the acquiring authority must make available to the fee owner or contract purchaser all  
4.9 appraisals of the property.

4.10 (b) The fee owner or contract purchaser may obtain an appraisal by a qualified  
4.11 appraiser of the property proposed to be acquired. The fee owner or contract purchaser  
4.12 is entitled to reimbursement for the reasonable costs of the appraisal from the acquiring  
4.13 authority up to a maximum of \$1,500 ~~within 30 days after the~~ for single family and  
4.14 two-family residential property, agricultural property, and minimum damage acquisitions  
4.15 and \$5,000 for other types of property, provided that the fee owner or contract purchaser  
4.16 submits to the acquiring authority the information necessary for reimbursement, ~~provided~~  
4.17 ~~that the owner does so~~ including a copy of the fee owner's or contract purchaser's  
4.18 appraisal, within 60 90 days after ~~the owner receives~~ receiving the appraisal from the  
4.19 authority under paragraph (a) and at least five days before a condemnation commissioners'  
4.20 hearing. For purposes of this paragraph, a "minimum damage acquisition" means an  
4.21 interest in property that a qualified person with appraisal knowledge indicates can be  
4.22 acquired for a cost of \$10,000 or less. For purposes of this paragraph, "agricultural  
4.23 property" has the meaning given in section 583.22, subdivision 2.

4.24 (c) The acquiring authority must pay the reimbursement to the fee owner or contract  
4.25 purchaser within 30 days after receiving a copy of the appraisal and the reimbursement  
4.26 information. Upon agreement between the acquiring authority and either the fee owner  
4.27 or contract purchaser, the acquiring authority may pay the reimbursement directly to  
4.28 the appraiser.

4.29 **Subd. 3. Negotiation.** In addition to the appraisal requirements under subdivision 2,  
4.30 before commencing an eminent domain proceeding, the acquiring authority must make a  
4.31 good faith attempt to negotiate personally with the fee owner or contract purchaser of the  
4.32 property in order to acquire the property by direct purchase instead of the use of eminent  
4.33 domain proceedings. In making this negotiation, the acquiring authority must consider  
4.34 the appraisals in its possession, including any appraisal obtained and furnished by the fee  
4.35 owner or contract purchaser if available, and other information that may be relevant to a  
4.36 determination of damages under this chapter.

5.1 Subd. 4. Use of appraisal at commissioners' hearing. An appraisal must not be  
 5.2 used or considered in a condemnation commissioners' hearing, nor may the appraiser who  
 5.3 prepared the appraisal testify, unless a copy of the appraiser's written report is provided to  
 5.4 the opposing party at least five days before the hearing.

5.5 **Sec. 5. [117.0412] LOCAL GOVERNMENT PUBLIC HEARING**  
 5.6 **REQUIREMENTS.**

5.7 Subdivision 1. Definitions. (a) For the purposes of this section:

5.8 (1) "local government" means the elected governing body of a statutory or home  
 5.9 rule charter city, county, or township; and

5.10 (2) "local government agency" means a subdivision, agency, authority, or other entity  
 5.11 of the local government, including a port authority, economic development authority,  
 5.12 housing and redevelopment authority, or other similar entity established under law.

5.13 Subd. 2. Public hearing; vote by local government governing body. (a) Before a  
 5.14 local government or local government agency commences an eminent domain proceeding  
 5.15 under section 117.055, a public hearing must be held as provided in this section. The local  
 5.16 government must notify each owner of property that may be acquired in writing of the  
 5.17 public hearing on the proposed taking, post the public hearing information on the local  
 5.18 government's Web site, if any, and publish notice of the public hearing in a newspaper  
 5.19 of general circulation in the local government's jurisdiction. Notice must be provided at  
 5.20 least 30 days but not more than 60 days before the hearing.

5.21 (b) Any interested person must be allowed reasonable time to present testimony at  
 5.22 the public hearing. The proceedings of the hearing must be recorded and available to the  
 5.23 public for review and comment at reasonable times and a reasonable place. At the next  
 5.24 regular meeting of the local government that is at least 30 days after the public hearing, the  
 5.25 local government must vote on the question of whether to authorize the local government  
 5.26 or local government agency to use eminent domain to acquire the property.

5.27 **Sec. 6. Minnesota Statutes 2004, section 117.055, is amended to read:**

5.28 **117.055 PETITION AND NOTICE.**

5.29 Subdivision 1. Petition. In all cases a petition, describing the desired land, stating by  
 5.30 whom and for what purposes it is proposed to be taken, and giving the names of all persons  
 5.31 appearing of record or known to the petitioner to be the owners thereof shall be presented  
 5.32 to the district court of the county in which the land is situated praying for the appointment  
 5.33 of commissioners to appraise the damages which may be occasioned by such taking.

5.34 Subd. 2. Notice. (a) Notice of the objects of the petition and of the time and place of  
 5.35 presenting the same shall be served at least 20 days before such time of presentation upon

6.1 all persons named in the petition as owners as defined in section 117.025, subdivision 3,  
6.2 and upon all occupants of such land in the same manner as a summons in a civil action.

6.3 (b) The notice must state that:

6.4 (1) a party wishing to challenge the public purpose, necessity, or authority for a  
6.5 taking must appear at the court hearing and state the objection; and

6.6 (2) a court order approving the public purpose, necessity, and authority for the taking  
6.7 is final unless an appeal is brought within 60 days after service of the order on the party.

6.8 (c) If any such owner be not a resident of the state, or the owner's place of residence  
6.9 be unknown to the petitioner, upon the filing of an affidavit of the petitioner or the  
6.10 petitioner's agent or attorney, stating that the petitioner believes that such owner is not  
6.11 a resident of the state, and that the petitioner has mailed a copy of the notice to the  
6.12 owner at the owner's place of residence, or that after diligent inquiry the owner's place  
6.13 of residence cannot be ascertained by the affiant, then service may be made upon such  
6.14 owner by three weeks' published notice. If the state be an owner, the notice shall be  
6.15 served upon the attorney general. Any owner not served as herein provided shall not be  
6.16 bound by such proceeding except upon voluntarily appearing therein. Any owner shall  
6.17 be furnished a right-of-way map or plat of all that part of land to be taken upon written  
6.18 demand, provided that the petitioner shall have ten days from the receipt of the demand  
6.19 within which to furnish the same. Any plans or profiles which the petitioner has shall be  
6.20 made available to the owner for inspection.

6.21 Sec. 7. Minnesota Statutes 2004, section 117.075, subdivision 1, is amended to read:

6.22 Subdivision 1. **Hearing on taking; evidentiary standard.** (a) Upon proof being  
6.23 filed of the service of such notice, the court, at the time and place therein fixed or to which  
6.24 the hearing may be adjourned, shall hear all competent evidence offered for or against the  
6.25 granting of the petition, regulating the order of proof as it may deem best.

6.26 (b) If the taking is for the mitigation of a blighted area, remediation of an  
6.27 environmentally contaminated area, reducing abandoned property, or removing a  
6.28 public nuisance, then, notwithstanding any other provision of general or special law,  
6.29 a condemning authority must show that the taking is necessary and for the designated  
6.30 public use.

6.31 (c) A court order approving the public purpose, necessity, and authority for the taking  
6.32 is final unless an appeal is brought within 60 days after service of the order on the party.

6.33 Sec. 8. Minnesota Statutes 2004, section 117.075, is amended by adding a subdivision  
6.34 to read:

7.1            Subd. 1b. Attorney fees. If the court determines that a taking is not for a public  
7.2 purpose or is unlawful, the court shall award the owner reasonable attorney fees and other  
7.3 related expenses, fees, and costs.

7.4            Sec. 9. Minnesota Statutes 2004, section 117.085, is amended to read:

7.5            **117.085 COMMISSIONERS, POWERS, DUTIES.**

7.6            The commissioners, having been duly sworn and qualified according to law, shall  
7.7 meet as directed by the order of appointment and hear the allegations and proofs of all  
7.8 persons interested touching the matters to them committed. They may adjourn from time  
7.9 to time and from place to place within the county, giving oral notice to those present of  
7.10 the time and place of their next meeting. All testimony taken by them shall be given  
7.11 publicly, under oath, and in their presence. They shall view the premises, and any of  
7.12 them may subpoena witnesses, which shall be served as subpoenas in civil actions are  
7.13 served, and at the cost of the parties applying therefor. If deemed necessary, they may  
7.14 require the petitioner or owner to furnish for their use maps, plats, and other information  
7.15 which the petitioner or owner may have showing the nature, character, and extent of the  
7.16 proposed undertaking and the situation of lands desired therefor. In proper cases they may  
7.17 reserve to the owner a right-of-way or other privilege in or over the land taken, or attach  
7.18 reasonable conditions to such taking in addition to the damages given or they may make  
7.19 an alternative award, conditioned upon the granting or withholding of the right specified.  
7.20 Without unreasonable delay they shall make a separate assessment and award of the  
7.21 damages which in their judgment will result to each of the owners of the land by reason  
7.22 of such taking and report the same to the court. The commissioners shall not reduce the  
7.23 amount of the damages awarded because the land being taken is, at the time of the taking,  
7.24 valued under section 273.111, designated as an agricultural preserve under chapter 473H.  
7.25 The commissioners, in all such proceedings, may in their discretion allow and show  
7.26 separately in addition to the award of damages, reasonable appraisal fees not to exceed a  
7.27 total of ~~\$500~~ \$1,500 for single family and two-family residential property, agricultural  
7.28 property, and minimum damage acquisitions and \$5,000 for other types of property. Upon  
7.29 request of an owner the commissioners shall show in their report the amount of the award  
7.30 of damages which is to reimburse the owner and tenant or lessee for the value of the land  
7.31 taken, and the amount of the award of damages, if any, which is to reimburse the owner  
7.32 and tenant or lessee for damages to the remainder involved, whether or not described in  
7.33 the petition. The amounts awarded to each person shall also be shown separately. The  
7.34 commissioners shall, if requested by any party, make an express finding of the estimated  
7.35 cost of removal and remedial actions that will be necessary on the taken property because  
7.36 of existing environmental contamination.

8.1           Sec. 10. [117.186] COMPENSATION FOR LOSS OF GOING CONCERN.

8.2           Subdivision 1. Definitions. For purposes of this section:

8.3           (1) "going concern" means the benefits that accrue to a business or trade as a result  
8.4 of its location, reputation for dependability, skill or quality, customer base, good will, or  
8.5 any other circumstances resulting in the probable retention of old or acquisition of new  
8.6 patronage; and

8.7           (2) "owner" has the meaning given in section 117.025 and includes a lessee who  
8.8 operates a business on real property that is the subject of an eminent domain proceeding.

8.9           Subd. 2. Compensation. In all eminent domain proceedings, the owner of a business  
8.10 or trade must be compensated for the loss of a going concern if the owner establishes that:

8.11           (1) the business or trade has been destroyed as a result of the taking;

8.12           (2) the loss cannot be reasonably prevented by relocating the business or trade in the  
8.13 same or a similar and reasonably suitable location as the property that was taken, or by  
8.14 taking steps and adopting procedures that a reasonably prudent person of a similar age  
8.15 and under similar conditions as the owner would take and adopt in preserving the going  
8.16 concern of the business or trade; and

8.17           (3) compensation for the loss of going concern will not be duplicated in the  
8.18 compensation otherwise awarded to the owner of the business or trade.

8.19           Subd. 3. Procedure. In all cases where an owner seeks compensation for loss  
8.20 of a going concern, the court must determine, upon motion by the owner, whether the  
8.21 going concern has been taken. If the court determines that there is a taking of the going  
8.22 concern, any damages must be determined by the commissioners under section 117.105  
8.23 and must be reported in the award of the commissioners separate from the award of just  
8.24 compensation for the real property taken. An award for loss of going concern may be  
8.25 appealed by any party in accordance with section 117.145.

8.26           Sec. 11. [117.187] MINIMUM COMPENSATION.

8.27           When an owner must relocate, the amount of damages payable, at a minimum, must  
8.28 be sufficient for an owner to purchase a similar house or building of equivalent size in  
8.29 the community and not less than the condemning authority's payment or deposit under  
8.30 section 117.042.

8.31           Sec. 12. [117.188] LIMITATIONS.

8.32           The condemning authority must not require the owner to accept as part of the  
8.33 compensation due any substitute or replacement property. The condemning authority must  
8.34 not require the owner to accept the return of property acquired or any portion thereof.

8.35           Sec. 13. [117.189] PUBLIC SERVICE CORPORATION EXCEPTIONS.

9.1 Sections 117.036; 117.055, subdivision 2, paragraph (b); 117.075, subdivision 1b;  
 9.2 117.186; 117.187; 117.188; and 117.52, subdivision 1a, to not apply to public service  
 9.3 corporations. For purposes of an award of appraisal fees under section 117.085, the fees  
 9.4 awarded may not exceed \$500 for all types of property.

9.5 Sec. 14. Minnesota Statutes 2004, section 117.51, is amended to read:

9.6 **117.51 COOPERATION WITH FEDERAL AUTHORITIES.**

9.7 In all acquisitions undertaken by any acquiring authority and in all voluntary  
 9.8 rehabilitation carried out by a person pursuant to acquisition or as a consequence thereof,  
 9.9 the acquiring authority shall cooperate to the fullest extent with federal departments and  
 9.10 agencies, and it shall take all necessary action in order to insure, to the maximum extent  
 9.11 possible, federal financial participation in any and all phases of acquisition, including the  
 9.12 provision of relocation assistance, services, payments and benefits to displaced persons.

9.13 ~~An acquiring authority may consider reimbursing up to \$50,000 in reestablishment~~  
 9.14 ~~expenses of a displaced business.~~

9.15 Sec. 15. Minnesota Statutes 2004, section 117.52, subdivision 1, is amended to read:

9.16 Subdivision 1. **Lack of federal funding.** In all acquisitions undertaken by any  
 9.17 acquiring authority and in all voluntary rehabilitation carried out by a person pursuant  
 9.18 to acquisition or as a consequence thereof, in which, due to the lack of federal financial  
 9.19 participation, relocation assistance, services, payments and benefits under the Uniform  
 9.20 Relocation Assistance and Real Property Acquisition Policies Act of 1970, United States  
 9.21 Code, title 42, sections 4601 to 4655, as amended by the Surface Transportation and  
 9.22 Uniform Relocation Assistance Act of 1987, Statutes at Large, volume 101, pages 246  
 9.23 to 256 (1987), are not available, the acquiring authority, as a cost of acquisition, shall  
 9.24 provide all relocation assistance, services, payments and benefits required by the Uniform  
 9.25 Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended by  
 9.26 the Surface Transportation and Uniform Relocation Assistance Act of 1987, and those  
 9.27 regulations adopted pursuant thereto, and either (1) in effect as of ~~July 1, 1988~~ January 1,  
 9.28 2006, or (2) becoming effective after ~~July 1, 1988~~ January 1, 2006, following a public  
 9.29 hearing and comment. Comments received by an acquiring authority within 30 days after  
 9.30 the public hearing must be reviewed and a written response provided to the individual or  
 9.31 organization who initiated the comment. The response and comments may be addressed in  
 9.32 another public hearing by the acquiring authority before approval.

3 Sec. 16. Minnesota Statutes 2004, section 117.52, is amended by adding a subdivision  
 9.34 to read:



10.1            Subd. 1a. **Reestablishment costs limit.** For purposes of relocation benefits paid by  
10.2 the acquiring authority in accordance with this section, the provisions of Code of Federal  
10.3 Regulations, title 49, section 24.304, with respect to reimbursement of reestablishment  
10.4 expenses for nonresidential moves are applicable, except that the acquiring authority shall  
10.5 reimburse the displaced business for expenses actually incurred up to a maximum of  
10.6 \$50,000.

10.7            Sec. 17. Minnesota Statutes 2004, section 163.12, subdivision 1a, is amended to read:

10.8            Subd. 1a. **Petition, notice, and access to information.** (a) Upon passage of the  
10.9 resolution specified in section 163.11, subdivision 2, a petition must be presented to the  
10.10 district court of the county in which the land is located. The petition must describe each  
10.11 tract of land through which the highway passes, state the purposes for which the land is  
10.12 proposed to be taken, and list the names of all persons appearing of record or known to  
10.13 the county to be the landowners.

10.14            (b) Notice of the objects of the petition and of the time and place of presenting the  
10.15 notice must be served, together with a copy of the resolution, upon each occupant of  
10.16 each tract of land through which the highway passes at least 20 days before the hearing  
10.17 under subdivision 1b. If an owner is not a resident of the state, or the owner's place of  
10.18 residence is unknown to the county, service may be made by three weeks' published  
10.19 notice following the filing of an affidavit on behalf of the county by the county's agent or  
10.20 attorney stating that the county:

10.21            (1) believes that the owner is not a resident of the state; and

10.22            (2) has either mailed a copy of the notice to the owner at the owner's last known  
10.23 residence address or, after diligent inquiry, the owner's place of residence cannot be  
10.24 ascertained by the county.

10.25            If the state is an owner, the notice must be served upon the attorney general. An owner  
10.26 not served as provided in this subdivision is not bound by the proceeding, except if the  
10.27 owner voluntarily appears in the proceeding.

10.28            (c) Within ten days of an owner's demand, the owner must be furnished a  
10.29 right-of-way map or plat of all that part of the owner's land to be taken. Any applicable  
10.30 plans or profiles that the county possesses must be made available to the owner for  
10.31 inspection.

10.32            (d) The notice must state that:

10.33            (1) a party wishing to challenge the public purpose, necessity, or authority for the  
10.34 taking must appear at the court hearing and state the objection; and

10.35            (2) a court order approving the public purpose, necessity, and authority for the taking  
10.36 is final unless an appeal is brought within 60 days after service of the order on the party.

11.1 Sec. 18. Minnesota Statutes 2004, section 163.12, subdivision 1b, is amended to read:

11.2 Subd. 1b. **Finding of necessity.** When proof of service of the notice required in  
11.3 subdivision 1a is filed with the court, the court shall hear all competent evidence offered  
11.4 for or against granting the petition at the time and place fixed in the notice or otherwise set  
11.5 by the court. On finding that the proposed taking is necessary and authorized by law the  
11.6 court shall order the proceedings to commence pursuant to the remaining provisions of  
11.7 this section. The court order finding the taking necessary and authorized by law is a final  
11.8 order and must be appealed within 60 days from its service on the party.

11.9 Sec. 19. Minnesota Statutes 2004, section 469.012, subdivision 1g, is amended to read:

11.10 Subd. 1g. **Get property; eminent domain.** (a) An authority may, within its area of  
11.11 operation, acquire real or personal property or any interest therein by gifts, grant, purchase,  
11.12 exchange, lease, transfer, bequest, devise, or otherwise, and by the exercise of the power  
11.13 of eminent domain, in the manner provided by chapter 117, acquire real property which it  
11.14 may deem necessary for its purposes, after the adoption by it of a resolution declaring that  
11.15 the acquisition of the real property is necessary:

11.16 (1) to eliminate one or more of the conditions found to exist in the resolution adopted  
11.17 pursuant to section 469.003 or to provide decent, safe, and sanitary housing for persons  
11.18 of low and moderate income; or

11.19 (2) to carry out a redevelopment project.

11.20 (b) Real property needed or convenient for a project may be acquired by the  
11.21 authority for the project by condemnation pursuant to this section and chapter 117.

11.22 ~~(c) Prior to adoption of a resolution authorizing acquisition of property by  
23 condemnation, the governing body of the authority must hold a public hearing on the  
11.24 proposed acquisition after published notice in a newspaper of general circulation in the  
11.25 municipality, which must be made at least one time not less than ten days nor more than  
11.26 30 days prior to the date of the hearing. The notice must reasonably describe the property  
11.27 to be acquired and state that the purpose of the hearing is to consider acquisition by  
11.28 exercise of the authority's powers of eminent domain. Not less than ten days before the  
11.29 hearing, notice of the hearing must also be mailed to the owner of each parcel proposed  
11.30 to be acquired, but failure to give mailed notice or any defects in the notice does not  
11.31 invalidate the acquisition. For the purpose of giving mailed notice, owners are determined  
11.32 in accordance with section 429.031, subdivision 1, paragraph (a).~~

11.33 ~~(d)~~ (c) Property acquired by condemnation under this section may include any  
11.34 property devoted to a public use, whether or not held in trust, notwithstanding that the  
11.35 property may have been previously acquired by condemnation or is owned by a public  
11.36 utility corporation, because the public use in conformity with the provisions of sections

12.1 469.001 to 469.047 shall be deemed a superior public use. Property devoted to a public  
12.2 use may be so acquired only if the governing body of the municipality has approved  
12.3 its acquisition by the authority.

12.4 ~~(e)~~ (d) An award of compensation shall not be increased by reason of any increase  
12.5 in the value of the real property caused by the assembly, clearance or reconstruction, or  
12.6 proposed assembly, clearance or reconstruction for the purposes of sections 469.001  
12.7 to 469.047 of the real property in an area.

12.8 Sec. 20. **REVISOR'S INSTRUCTION.**

12.9 The revisor shall change the phrase "right of eminent domain" where found in  
12.10 Minnesota Statutes and Minnesota Rules to "power of eminent domain."

12.11 Sec. 21. **EFFECTIVE DATE.**

12.12 This act is effective the day following final enactment and applies to condemnation  
12.13 proceedings commenced on or after March 1, 2006."

1  
Ortman → passed

Page 12, line 13, delete "commenced"  
and insert "for which service of notice of  
the petition under Minnesota Statutes,  
section 117.055, is made"

Ortman oral  
amendment to A12  
of SF 2750

1.1 Senator ..... moves to amend the delete-everything amendment  
1.2 (SCS2750A12) to S.F. No. 2750 as follows:

1.3 Page 5, after line 26, insert:

1.4 "Subd. 3. Resolution. A resolution of a local government or local government  
1.5 agency authorizing the use of eminent domain must:

1.6 (1) identify and describe the public <sup>costs and</sup> benefits that are known or expected to result  
1.7 from the program or project for which the property interest is proposed to be acquired; and

1.8 ~~(2) identify and describe the private benefits that are known or expected to result~~  
1.9 ~~from the anticipated conveyance of the property interest proposed to be acquired;~~

1.10 ~~(3) summarize and respond to any oral comments made at the public hearing or~~  
1.11 ~~written comments received at or prior to the public hearing; and~~

1.12 ~~(2) address how the acquisition of the property interest serves one or more identified~~  
1.13 ~~public purposes and why the acquisition of the property is reasonably necessary to~~  
1.14 ~~accomplish those purposes."~~

Add:

If the taking is for the mitigation of a blighted area, remediation of an environmentally contaminated area, reducing abandoned property, or removing a public nuisance.

1.1 Senator ..... moves to amend the delete-everything amendment  
1.2 (SCS2750A-~~8~~<sup>12</sup>) to S.F. No. 2750 as follows:

1.3 Page 9, after line 4, insert:

1.4 "Sec. 14. [117.196] ATTORNEY FEES.

1.5 If the final judgment or award of damages is at least 20 percent greater than the last  
1.6 written offer of compensation made by the condemning authority before the filing of the  
1.7 petition, the court <sup>may</sup> shall award the owner reasonable attorney fees, <sup>and costs</sup> ~~litigation expenses,~~  
1.8 ~~appraisal fees, expert fees, and related costs~~ in addition to other compensation and fees  
1.9 authorized by this chapter."

1.10 Renumber the sections in sequence and correct the internal references

1.11 Amend the title accordingly

## SF 2750—Legal Issues of Concern

### Senate Judiciary Committee

- **The bill requires the payment of attorney fees and related expenses to the property owner if the final judgment is more than 20 percent over the last written offer made by the condemning authority.** This provision could impede initial negotiations by providing property owners with a financial incentive to force cases to condemnation with the hope of reaching a judgment exceeding the 20 percent threshold.
- **The bill prohibits courts from awarding attorney fees and related expenses to a condemning authority.** Current law allows for the awarding of such fees when the property owner asserts claims for an improper purpose, or without factual legal support. This provision would protect claimants who assert claims for improper purposes from financial penalties, and potentially encourage pursuit of unwarranted claims.
- **The bill requires that in cases involving blight and/or contaminated properties, the condemning authority must establish by “clear and convincing” evidence that the use of eminent domain to acquire the property is necessary—an unprecedented standard of review.** The U.S. and State Supreme Courts have repeatedly recognized, in eminent domain cases and others, that courts should defer to legislative judgments and should not substitute their judgments for those of the lawmakers—including local officials.
- **The bill entitles business owners to damages for loss of going concern, unless the condemning authority proves by clear and convincing evidence that the owner should not receive those damages.** In the bill, loss of going concern is not restricted to instances where the owner goes out of business, which is what the law currently requires. Since the bill only requires a property owner to notify the local government that they will be seeking the damages 30 days in advancing of the compensation hearing, this gives the condemning authority an impossibly short time- frame to rebut the presumption by clear and convincing evidence. Additionally, the Courts have traditionally disfavored loss of going concern claims because of the difficulty of proof and the fact that the evidence is easily subject to manipulation.
- **The bill provides that any district court’s decision on necessity and public use be reviewed on appeal *de novo*.** The court of appeals would make its decision without giving any deference to the trial court decision. Appellate courts traditionally defer to trial courts on questions of fact because the trial court hears testimony, and is better positioned to weigh evidence. This provision not only demonstrates a distrust of local decision makers, but also calls into question the judgment of judicial fact finders.
- **Taken together, these provisions would significantly affect eminent domain acquisitions for traditional public purposes—streets, highways, and parks—in addition to restricting use of the tool for economic development purposes.** By requiring *de novo* review at the appellate level, payment of property owners’ attorney fees, and automatic compensation for the loss of going concern, SF 2750 would significantly increase the cost of many public projects for Minnesota taxpayers.

# Responsible Eminent Domain Reform: SF 2694

## A Balanced Alternative to SF 2750

*A coalition of local government organizations has drafted legislation (SF 2694) that would preserve the responsible use of eminent domain and the ability of local governments to balance the rights of individual property owners with the needs of the community. The proposal includes substantive and procedural changes that would address the issues raised in the Kelo v. New London case and would improve Minnesota's eminent domain law for all involved. It is not only a reaction to concerns raised as a result of the Kelo decision, but also would implement improvements to eminent domain law that local officials with real-world experience using eminent domain have suggested. It is a responsible alternative to SF 2750, the proposal supported by the Institute for Justice (IJ) and the Minnesota Automobile Dealers Association (MADA), and sponsored by Rep. Jeff Johnson and Sen. Tom Bakk.*

### Scope and Impact of SF 2750

- **SF 2750 would affect acquisitions for traditional public purposes, such as roads, sewers and parks.** By requiring a de novo review at the appellate level, payment of property owners' attorney fees, and automatic compensation for the loss of going concern, the bill would significantly increase the cost of many public projects.
- **SF 2750 bans the use of eminent domain for economic development purposes, and effectively prohibits the use of this tool for redevelopment.** The proponents of the bill purport that most of the projects residents support that involve redevelopment of blighted and contaminated areas would still be able to occur under their legislation. The reality is that many of the redevelopment projects undertaken through public-private partnerships during the past decade would simply not have been possible if the bill had been law.
- **SF 2750 creates virtually unattainable standards for determining what constitutes a "blighted area" and an "environmentally contaminated area," severely compromising the ability to assemble parcels for redevelopment.** For example, a severely run-down building could not be considered "blighted" unless it was nearly unfit for human habitation and had significant structural building code violations. "Blight" of this nature is extremely rare in Minnesota. Similarly, the definition of "environmentally contaminated area" contains lot coverage and remediation cost requirements that would make many clearly contaminated properties ineligible for public clean-up efforts.
- **On the whole, SF 2750 jeopardizes the viability of critical development projects that businesses and residents have made a priority in their communities.**

### A Balanced, Alternative Proposal

The proposal brought forward by the League of Minnesota Cities and other local government groups focuses on changes to current law that would address the concerns property owners have raised in response to the *Kelo v. New London* decision, and would strengthen accountability by creating a more transparent and predictable eminent domain process.

#### **Responsible addresses concerns raised by the Kelo decision**

The local government proposal would amend redevelopment and economic development law (Minn. Stat. Chap. 469) to clarify the statutory purposes for which eminent domain may be used. Specifically, the bill:

- **Prohibits use of eminent domain for economic development, except when the project is funded by the State.** The proposed bill would prohibit the use of eminent domain solely for economic development purposes, such as increasing tax base or employment, unless State financial assistance is involved.



- **Specifies the purposes for which a city or other acquiring authority may exercise eminent domain under State redevelopment and economic development laws.** This proposal lists several purposes that would justify the use of eminent domain, including: public ownership or use; removing a public nuisance; remedying or improving an environmentally contaminated area; remedying or improving a blighted area; or building affordable housing.
- **Provides clearer, more objective, and reasonable criteria for determining "blight."** This proposal would improve on current law by providing a more rigorous test for determining the existence of a "blighted area" for the purposes of eminent domain. If the legislature adopted this more objective standard, there would be no rationale for the heightened standard of court review in eminent domain cases included in SF 2750.

### ***Strengthens accountability by improving the land acquisition process***

The local government proposal also makes changes to general eminent domain law (Chapter 117) to provide a more transparent and predictable process for property owners. Specifically, the bill:

- **Requires uniform appraisal and negotiation requirements for all acquisitions.** Under current law, the appraisal and negotiation requirements in 117.036 apply only to acquisitions for transportation purposes. This proposal would extend these requirements to all acquisitions. For example, the bill would require that the acquiring authority obtain an appraisal of the property; allow property owners to obtain an independent appraisal and be reimbursed by the acquiring authority; and require the acquiring authority to share its appraisal with the property owner before initiating condemnation proceedings.
- **Establishes a definitive timeframe for individuals to appeal the public purpose of any eminent domain acquisition, and allows a court to award attorney fees to a property owner if the court finds that the acquisition is not for a public purpose.** The proposal provides that a court order approving the public purpose, necessity, and authority for an eminent domain acquisition is final unless an appeal is brought within 60 days. Establishing a definitive timeframe for appeal of an order creates a more predictable process for all concerned parties. If the court finds that the acquisition is not for a public purpose, then the court may award attorney fees to the property owner.
- **Requires an acquiring authority to offer to sell the property to the previous owner, if a determination is made that property acquired by eminent domain has not been used and is no longer needed for a public purpose.** In rare cases where the acquiring authority determines that publicly owned property acquired by eminent domain is no longer needed for the purpose for which it was originally acquired, the acquiring authority must offer to sell the property to the prior owner. This requirement would not apply if the acquiring authority has an alternative use for the property and it would remain in public ownership.
- **Enhances public notice and hearing requirements for acquisitions for redevelopment and economic development purposes.** The bill would provide greater opportunities for public input on a proposed acquisition through a uniform public notice and hearing process. It would also require adoption of a resolution that responds to comments made at the public hearing and articulates how the acquisition serves one or more identified public purposes.
- **Better recognizes property owners' costs.** The bill would provide additional reimbursement for certain appraisals. It would also require reimbursement for up to \$50,000 in re-establishment expenses for displaced business owners who qualify under the Federal Uniform Relocation Act. This additional reimbursement would provide further help to business owners to successfully re-establish their businesses.



# Minnesota Senate

House | Senate | Joint Departments and Commissions | Bill Search and Status | Statutes, Laws, and Rules

KEY: ~~stricken~~ = removed, old language. underscored = added, new language.

E: If you cannot see a difference in the key above, you can change the display of stricken and underscored text.

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S.F. No. 2694, as introduced - 84th Legislative Session (2005-2006) Posted on Mar 01, 2006

1.1 A bill for an act  
 1.2 relating to eminent domain; providing for and regulating the use of eminent  
 1.3 domain; providing for notice, hearing, appeal, and other procedural requirements;  
 1.4 allowing attorney fees under certain conditions; providing for a right of first  
 1.5 refusal; providing definitions; making clarifying, conforming, and technical  
 1.6 changes; amending Minnesota Statutes 2004, sections 117.036; 117.055;  
 1.7 117.075, by adding subdivisions; 117.085; 117.51; 117.52, subdivision 1, by  
 1.8 adding a subdivision; 163.12, subdivisions 1a, 1b; 469.012, subdivision 1g;  
 1.9 proposing coding for new law in Minnesota Statutes, chapters 117; 469.  
 1.10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.11 Section 1. Minnesota Statutes 2004, section 117.036, is amended to read:

1.12 **117.036 APPRAISAL AND NEGOTIATION REQUIREMENTS**  
 1 ~~APPLICABLE TO ACQUISITION OF PROPERTY FOR TRANSPORTATION~~  
 1 ~~PURPOSES.~~

1.15 Subdivision 1. **Application.** This section applies to the acquisition of property  
 1.16 ~~for public highways, streets, roads, alleys, airports, mass transit facilities, or for~~  
 1.17 ~~transportation facilities or purposes under this chapter.~~

1.18 Subd. 2. **Appraisal.** (a) Before commencing an eminent domain proceeding under  
 1.19 this chapter, the acquiring authority must obtain at least one appraisal for the prope  
 1.20 posed to be acquired. In making the appraisal, the appraiser must confer with one c  
 1.21 more of the fee owners or contract purchasers of the property, if reasonably possible.  
 1.22 ~~At least~~ Notwithstanding section 13.44 or any other law to the contrary, the acquiring  
 1.23 authority must provide the fee owner or contract purchaser with a copy of the apprais  
 1.24 at the time an offer is made, but no later than 20 days before presenting a petition u  
 1.25 section 117.055, the acquiring authority must provide the owner with a copy of the  
 1.26 appraisal and inform the owner of the owner's fee owner or contract purchaser of the r  
 2.1 to obtain an appraisal under this section. Upon request, the acquiring authority must  
 2.2 available to the fee owner or contract purchaser all appraisals of the property.

2.3 (b) The fee owner or contract purchaser may obtain an appraisal by a qualified  
 2.4 appraiser of the property proposed to be acquired. The fee owner or contract purchaser  
 2.5 is entitled to reimbursement for the reasonable costs of the appraisal from the acquir  
 2.6 authority up to a maximum of \$1,500 within 30 days after the ~~for single family and~~  
 2.7 two-family residential property, agricultural property, and minimum damage acquisitior  
 2.8 and \$5,000 for other types of property, provided that the fee owner or contract purcha  
 2 submits to the acquiring authority the information necessary for reimbursement, ~~provi~~  
 2 that the owner does so including a copy of the fee owner's or contract purchaser's  
 2.11 appraisal, within 60 90 days after the owner receives receiving the appraisal from the  
 2.12 authority under paragraph (a) and at least 30 days before a condemnation commissioners  
 2.13 hearing. For purposes of this paragraph, a "minimum damage acquisition" means an  
 2.14 interest in property that a qualified person with appraisal knowledge indicates can be  
 2.15 acquired for a cost of \$10,000 or less. For purposes of this paragraph, "agricultural  
 2.16 property" has the meaning given in section 583.22, subdivision 2.

2.17 (c) The acquiring authority must pay the reimbursement to the fee owner or contract  
 2.18 purchaser within 30 days after receiving a copy of the appraisal and the reimbursement  
 2.19 information. Upon agreement between the acquiring authority and either the fee owner  
 2.20 or contract purchaser, the acquiring authority may pay the reimbursement directly to  
 2.21 the appraiser.

2.22 Subd. 3. **Negotiation.** In addition to the appraisal requirements under subdivision  
 2.23 before commencing an eminent domain proceeding, the acquiring authority must make a  
 2.24 good faith attempt to negotiate personally with the fee owner or contract purchaser of  
 2.25 property in order to acquire the property by direct purchase instead of the use of emi  
 2.26 domain proceedings. In making this negotiation, the acquiring authority must consider  
 2.27 the appraisals in its possession, including any appraisal obtained and furnished by th  
 2.28 owner or contract purchaser if available, and other information that may be relevant  
 2.29 determination of damages under this chapter.

2.30 Subd. 4. **Condemnation commissioners' hearing.** Notwithstanding section 13.44,  
 2.31 an appraisal must not be used or considered in a condemnation commissioners' hearing,  
 2.32 nor may the appraiser who prepared the appraisal testify, unless a copy of the apprais  
 2.33 written report is provided to the opposing party at least five days before the hearing

2.34 Sec. 2. Minnesota Statutes 2004, section 117.055, is amended to read:

2.35 **117.055 PETITION AND NOTICE.**

3.1 Subdivision 1. **Petition.** In all cases a petition, describing the desired land, sta  
 3.2 whom and for what purposes it is proposed to be taken, and giving the names of all per  
 3.3 appearing of record or known to the petitioner to be the owners thereof shall be prese  
 3.4 to the district court of the county in which the land is situated praying for the appc  
 3.5 of commissioners to appraise the damages which may be occasioned by such taking.

3.6 Subd. 2. **Notice.** (a) Notice of the objects of the petition and of the time and pla  
 3.7 presenting the same shall be served at least 20 days before such time of presentation  
 3.8 all persons named in the petition as owners as defined in section 117.025, subdivisic  
 3.9 and upon all occupants of such land in the same manner as a summons in a civil action.

3.10 (b) The notice must state that: (1) a party wishing to challenge the public purpose,  
 3.11 necessity, or authority for a taking must appear at the court hearing and state the ok  
 3.12 (2) failure to appear and object is deemed a waiver of any objection; and (3) a court  
 3.13 approving the public purpose, necessity, and authority for the taking is final unless  
 3.14 appeal is brought within 60 days after service of the order on the party.

3.15 (c) If any such owner be not a resident of the state, or the owner's place of resid  
 3.16 be unknown to the petitioner, upon the filing of an affidavit of the petitioner or the  
 3.17 petitioner's agent or attorney, stating that the petitioner believes that such owner i  
 3.18 a resident of the state, and that the petitioner has mailed a copy of the notice to th  
 3.19 owner at the owner's place of residence, or that after diligent inquiry the owner's pl  
 3.20 of residence cannot be ascertained by the affiant, then service may be made upon such  
 3.21 owner by three weeks' published notice. If the state be an owner, the notice shall be  
 3.22 served upon the attorney general. Any owner not served as herein provided shall not be  
 3.23 bound by such proceeding except upon voluntarily appearing therein. Any owner shall  
 3.24 be furnished a right-of-way map or plat of all that part of land to be taken upon writ  
 3.25 demand, provided that the petitioner shall have ten days from the receipt of the demar  
 3.26 within which to furnish the same. Any plans or profiles which the petitioner has shall  
 3.27 made available to the owner for inspection.

3.28 Sec. 3. Minnesota Statutes 2004, section 117.075, is amended by adding a subdivisi  
 3.29 to read:

3.30 Subd. 1a. **Appeal of order.** A party wishing to challenge the public purpose,  
 3.31 necessity, or authority for a taking must appear at the court hearing required by subc  
 3.32 1 and state the objection. Failure to appear and object is deemed a waiver of any obje  
 3.33 A court order approving the public purpose, necessity, and authority for the taking is  
 3.34 unless an appeal is brought within 60 days after service of the order on the party.

4.1 Sec. 4. Minnesota Statutes 2004, section 117.075, is amended by adding a subdivi  
 4.2 to read:

4.3 Subd. 1b. **Attorney fees.** If the court determines that a taking is not for a public  
 4.4 purpose or is unlawful, the court may award the owner reasonable attorney fees.

4.5 Sec. 5. Minnesota Statutes 2004, section 117.085, is amended to read:

4.6 **117.085 COMMISSIONERS, POWERS, DUTIES.**

4.7 The commissioners, having been duly sworn and qualified according to law, shall  
 4.8 meet as directed by the order of appointment and hear the allegations and proofs of al  
 4.9 persons interested touching the matters to them committed. They may adjourn from time  
 4.10 to time and from place to place within the county, giving oral notice to those present  
 4.11 the time and place of their next meeting. All testimony taken by them shall be given

4.12 publicly, under oath, and in their presence. They shall view the premises, and any of  
 4.13 them may subpoena witnesses, which shall be served as subpoenas in civil actions are  
 4.14 served, and at the cost of the parties applying therefor. If deemed necessary, they may  
 4.15 require the petitioner or owner to furnish for their use maps, plats, and other inform  
 4.16 which the petitioner or owner may have showing the nature, character, and extent of th  
 4.17 proposed undertaking and the situation of lands desired therefor. In proper cases they  
 4.18 reserve to the owner a right-of-way or other privilege in or over the land taken, or a  
 4.19 reasonable conditions to such taking in addition to the damages given or they may make  
 4.20 an alternative award, conditioned upon the granting or withholding of the right specif  
 4.21 Without unreasonable delay they shall make a separate assessment and award of the  
 4.22 damages which in their judgment will result to each of the owners of the land by reasc  
 4.23 of such taking and report the same to the court. The commissioners shall not reduce th  
 4.24 amount of the damages awarded because the land being taken is, at the time of the taki  
 4.25 valued under section 273.111, designated as an agricultural preserve under chapter 47  
 4.26 The commissioners, in all such proceedings, may in their discretion allow and show  
 4.27 separately in addition to the award of damages, reasonable appraisal fees not to excee  
 4.28 total of ~~\$500~~ \$1,500 for single family and two-family residential property, agricultur  
 4.29 property, and minimum damage acquisitions and \$5,000 for other types of property. Upon  
 4.30 request of an owner the commissioners shall show in their report the amount of the awa  
 4.31 of damages which is to reimburse the owner and tenant or lessee for the value of the l  
 4.32 taken, and the amount of the award of damages, if any, which is to reimburse the owner  
 4.33 and tenant or lessee for damages to the remainder involved, whether or not described i  
 4.34 the petition. The amounts awarded to each person shall also be shown separately. The  
 4.35 commissioners shall, if requested by any party, make an express finding of the estimat  
 5.1 cost of removal and remedial actions that will be necessary on the taken property beca  
 5.2 of existing environmental contamination.

5.3 **Sec. 6. [117.226] RIGHT OF FIRST REFUSAL.**

5.4 (a) If the governing body of the acquiring authority determines that publicly owned  
 5.5 property acquired under this chapter has not been used and is no longer needed for the  
 5.6 purpose for which it was originally acquired, the authority must offer to sell the prop  
 5.7 to the owner from whom it was acquired. If the former owner can be located, the acquir  
 5.8 authority must offer to sell the property at the current fair market value of the prop  
 5.9 the current fair market value is less than what the acquiring authority paid for the p  
 5.10 the acquiring authority must offer to sell the property for the amount that the acquir  
 5.11 authority paid when it originally acquired the property.

5.12 (b) The acquiring authority must attempt to locate the former owner by:

5.13 (1) sending notice of the right of first refusal by first class mail to the last know  
 5.14 address of the former owner; and

5.15 (2) providing two weeks' published notice of the right of first refusal in a newspaper  
 5.16 of general circulation.

5.17 (c) If the former owner cannot be located or declines to repurchase the property  
 5.18 within 60 days of providing the notice described in paragraph (b), the acquiring authc  
 5.19 shall prepare a certificate attesting to the same and record the certificate in the of  
 5.20 county recorder or county registrar of titles, as appropriate, to evidence the termina  
 5.21 the right of first refusal.

5.22 (d) This section shall not apply:

5.23 (1) if the acquiring authority has an alternative use for the property and the propert  
 5.24 would remain in public ownership; or

5.25 (2) to acquisitions of property for transportation purposes made by the commissioner  
 5.26 of transportation.

5.27 **Sec. 7. Minnesota Statutes 2004, section 117.51, is amended to read:**

5.28 **117.51 COOPERATION WITH FEDERAL AUTHORITIES.**

5.29 In all acquisitions undertaken by any acquiring authority and in all voluntary  
 5.30 rehabilitation carried out by a person pursuant to acquisition or as a consequence the  
 5.31 the acquiring authority shall cooperate to the fullest extent with federal departments  
 5.32 agencies, and it shall take all necessary action in order to insure, to the maximum ex  
 5.33 possible, federal financial participation in any and all phases of acquisition, includ  
 5.34 provision of relocation assistance, services, payments and benefits to displaced persc  
 6.1 ~~An acquiring authority may consider reimbursing up to \$50,000 in reestablishment~~  
 6.2 ~~expenses of a displaced business.~~

6.3 Sec. 8. Minnesota Statutes 2004, section 117.52, subdivision 1, is amended to read  
 6.4 Subdivision 1. **Lack of federal funding.** In all acquisitions undertaken by any  
 6.5 acquiring authority and in all voluntary rehabilitation carried out by a person pursua  
 6.6 to acquisition or as a consequence thereof, in which, due to the lack of federal finan  
 6.7 participation, relocation assistance, services, payments and benefits under the Unifor  
 6.8 Relocation Assistance and Real Property Acquisition Policies Act of 1970, United State  
 6.9 Code, title 42, sections 4601 to 4655, as amended by the Surface Transportation and  
 6.10 Uniform Relocation Assistance Act of 1987, Statutes at Large, volume 101, pages 246  
 6.11 to 256 (1987), are not available, the acquiring authority, as a cost of acquisition, s  
 6.12 provide all relocation assistance, services, payments and benefits required by the Uni  
 6.13 Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended b  
 6.14 the Surface Transportation and Uniform Relocation Assistance Act of 1987, and those  
 6.15 regulations adopted pursuant thereto, and either (1) in effect as of July 1, 1988 Janu  
 6.16 2006, or (2) becoming effective after July 1, 1988 January 1, 2006, following a public  
 6.17 hearing and comment. Comments received by an acquiring authority within 30 days after  
 6.18 the public hearing must be reviewed and a written response provided to the individual  
 6.19 organization who initiated the comment. The response and comments may be addressed in  
 6.20 another public hearing by the acquiring authority before approval.

6.21 Sec. 9. Minnesota Statutes 2004, section 117.52, is amended by adding a subdivisio  
 6.22 read:

6.23 Subd. 1a. Reestablishment costs limit. For purposes of relocation benefits paid in  
 6.24 accordance with this section, the limitation in Code of Federal Regulations, title 49,  
 6.25 24.304, with respect to reimbursement of reestablishment expenses for nonresidential  
 6.26 moves, an acquiring authority shall reimburse up to \$50,000 for such expenses.

6.27 Sec. 10. Minnesota Statutes 2004, section 163.12, subdivision 1a, is amended to re

6.28 Subd. 1a. **Petition, notice, and access to information.** (a) Upon passage of the  
 6.29 resolution specified in section 163.11, subdivision 2, a petition must be presented  
 6.30 district court of the county in which the land is located. The petition must describ  
 6.31 tract of land through which the highway passes, state the purposes for which the land  
 6.32 proposed to be taken, and list the names of all persons appearing of record or known t  
 6.33 the county to be the landowners.

7.1 (b) Notice of the objects of the petition and of the time and place of presenting the  
 7.2 notice must be served, together with a copy of the resolution, upon each occupant of  
 7.3 each tract of land through which the highway passes at least 20 days before the hearin  
 7.4 under subdivision 1b. If an owner is not a resident of the state, or the owner's place  
 7.5 residence is unknown to the county, service may be made by three weeks' published  
 7.6 notice following the filing of an affidavit on behalf of the county by the county's ag  
 7.7 attorney stating that the county:

7.8 (1) believes that the owner is not a resident of the state; and  
 7.9 (2) has either mailed a copy of the notice to the owner at the owner's last known  
 7.10 residence address or, after diligent inquiry, the owner's place of residence cannot be  
 7.11 ascertained by the county.

7.12 If the state is an owner, the notice must be served upon the attorney general. An owne  
 7.13 not served as provided in this subdivision is not bound by the proceeding, except if t  
 7.14 owner voluntarily appears in the proceeding.

7.15 (c) Within ten days of an owner's demand, the owner must be furnished a  
 7.16 right-of-way map or plat of all that part of the owner's land to be taken. Any applica  
 7.17 plans or profiles that the county possesses must be made available to the owner for  
 7.18 inspection.

7.19 (d) The notice must state that: (1) a party wishing to challenge the public purpose,  
 7.20 necessity, or authority for the taking must appear at the court hearing and state the  
 7.21 objection; (2) failure to appear and object is deemed a waiver of any objection; and (  
 7.22 court order approving the public purpose, necessity, and authority for the taking is f  
 7.23 unless an appeal is brought within 60 days after service of the order on the party.

7.24 Sec. 11. Minnesota Statutes 2004, section 163.12, subdivision 1b, is amended to re

7.25 Subd. 1b. **Finding of necessity.** When proof of service of the notice required in  
 7.26 subdivision 1a is filed with the court, the court shall hear all competent evidence of  
 7.27 for or against granting the petition at the time and place fixed in the notice or othe  
 7.28 by the court. On finding that the proposed taking is necessary and authorized by law t  
 7.29 court shall order the proceedings to commence pursuant to the remaining provisions of

7.30 this section. The court order finding the taking necessary and authorized by law is a  
 7.31 order and must be appealed within 60 days from its service on the party.

7.32 Sec. 12. Minnesota Statutes 2004, section 469.012, subdivision 1g, is amended to r

7.33 Subd. 1g. **Get property; eminent domain.** (a) An authority may, within its area of  
 7.34 operation, acquire real or personal property or any interest therein by gifts, grant,  
 8 exchange, lease, transfer, bequest, devise, or otherwise, and by the exercise of the p  
 8 of eminent domain, in the manner provided by chapter 117, acquire real property which  
 8.3 may deem necessary for its purposes, after the adoption by it of a resolution declarin  
 8.4 the acquisition of the real property is necessary:

8.5 (1) to eliminate one or more of the conditions found to exist in the resolution adopte  
 8.6 pursuant to section 469.003 or to provide decent, safe, and sanitary housing for pers  
 8.7 of low and moderate income; or

8.8 (2) to carry out a redevelopment project.

8.9 (b) Real property needed or convenient for a project may be acquired by the  
 8.10 authority for the project by condemnation pursuant to this section and section 469.401

8.11 ~~(c) Prior to adoption of a resolution authorizing acquisition of property by~~  
 8.12 ~~condemnation, the governing body of the authority must hold a public hearing on the~~  
 8.13 ~~proposed acquisition after published notice in a newspaper of general circulation in t~~  
 8.14 ~~municipality, which must be made at least one time not less than ten days nor more tha~~  
 8.15 ~~30 days prior to the date of the hearing. The notice must reasonably describe the prop~~  
 8.16 ~~to be acquired and state that the purpose of the hearing is to consider acquisition by~~  
 8.17 ~~exercise of the authority's powers of eminent domain. Not less than ten days before th~~  
 8.18 ~~hearing, notice of the hearing must also be mailed to the owner of each parcel propose~~  
 8.19 ~~to be acquired, but failure to give mailed notice or any defects in the notice does ne~~  
 8.20 ~~invalidate the acquisition. For the purpose of giving mailed notice, owners are deter~~  
 8.21 ~~in accordance with section 429.031, subdivision 1, paragraph (a).~~

8.22 ~~(d) (c) Property acquired by condemnation under this section may include any~~  
 8.23 ~~property devoted to a public use, whether or not held in trust, notwithstanding that t~~  
 8.24 ~~property may have been previously acquired by condemnation or is owned by a public~~  
 8.25 ~~utility corporation, because the public use in conformity with the provisions of secti~~  
 8.26 ~~469.001 to 469.047 shall be deemed a superior public use. Property devoted to a publi~~  
 8.27 ~~use may be so acquired only if the governing body of the municipality has approved~~  
 8.28 ~~its acquisition by the authority.~~

8.29 ~~(e) (d) An award of compensation shall not be increased by reason of any increase~~  
 8.30 ~~in the value of the real property caused by the assembly, clearance or reconstruction,~~  
 8.31 ~~proposed assembly, clearance or reconstruction for the purposes of sections 469.001~~  
 8.32 ~~to 469.047 of the real property in an area.~~

8.33 Sec. 13. [469.401] ACQUISITION BY EMINENT DOMAIN UNDER THIS  
 8.34 CHAPTER.

9.1 Subdivision 1. **Application.** Sections 469.401 to 469.403 apply to the exercise of  
 9.2 eminent domain powers by a condemning authority under this chapter if the property  
 9.3 interest to be acquired by eminent domain is intended to be sold, transferred, or othe  
 9.4 conveyed to a person or nongovernmental entity without the power of eminent domain.

9.5 Subd. 2. **Public hearing and notice required.** Prior to adoption of a resolution  
 9.6 authorizing the use of eminent domain, the governing body of the condemning authority  
 9.7 must hold a public hearing on the proposed acquisition after published notice in a  
 9.8 newspaper of general circulation in the governing body's jurisdiction and on the gover  
 9.9 body's Web site, if applicable, which must be made at least one time not less than two  
 9.10 weeks nor more than 60 days prior to the date of the hearing. The notice must reasona  
 9.11 describe the property interest to be acquired, state that the purpose of the hearing i  
 9.12 consider acquisition by eminent domain, state that comments may be submitted orally  
 9.13 at the hearing or in writing prior to or at the hearing, and specify an address to whi  
 9.14 written comments may be mailed. Not less than two weeks before the hearing, notice of  
 9.15 the hearing must also be mailed to the owner of each parcel proposed to be acquired, b  
 9.16 defects in the notice do not invalidate the acquisition. For the purpose of giving mai  
 9.17 notice, owners are determined as provided by section 429.031, subdivision 1, paragraph  
 9.18 (a). The resolution authorizing the use of eminent domain must not be adopted at the s  
 9.19 meeting or on the same day as the public hearing.

9.20 Subd. 3. **Resolution.** The resolution authorizing the use of eminent domain must:  
 9.21 (1) identify and describe the public benefits that are known or expected to result  
 9.22 from the program or project for which the property interest is proposed to be acquire

- 9.23 (2) identify and describe the private benefits that are known or expected to result  
 9.24 from the anticipated conveyance of the property interest proposed to be acquired;  
 9.25 (3) summarize and respond to any oral comments made at the public hearing or  
 9.26 written comments received at or prior to the public hearing; and  
 9.27 (4) address how the acquisition of the property interest serves one or more identified  
 9.28 public purposes and why the acquisition of the property is reasonably necessary to  
 9.29 accomplish those purposes.

9.30 Subd. 4. **Summary of findings.** The governing body of a condemning authority  
 9.31 must summarize the findings adopted in the resolution authorizing the use of eminent  
 9.32 domain in the notice of petition required under section 117.055.

9.33 Sec. 14. **[469.402] DEFINITIONS.**

9.34 Subdivision 1. **Scope.** For purposes of sections 469.401 to 469.403, the following  
 9.35 terms have the meanings given to them.

10.1 Subd. 2. **Abandoned.** "Abandoned" means that at least 75 percent of a building's  
 10.2 area has been substantially unoccupied for at least one year prior to the date of incl  
 10.3 in a blighted area.

10.4 Subd. 3. **Blighted area.** "Blighted area" is an area where the condemning authority  
 10.5 finds that the conditions provided in clauses (a), (b), and (c) exist:

10.6 (a) the land is or has been in urban use;

10.7 (b) at least one of the following conditions exist:

10.8 (1) 50 percent or more of the buildings in the area are structurally substandard  
 10.9 or abandoned or a combination thereof;

10.10 (2) 30 percent or more of the parcels in the area constitute an environmentally  
 10.11 contaminated area; or

10.12 (3) (i) 20 percent or more of the buildings in the area are structurally substandard  
 10.13 or abandoned or a combination thereof, and (ii) an additional 30 percent or more of th  
 10.14 buildings in the area are obsolete as evidenced by lack of investment based on limited  
 10.15 building permits for repair or improvements in the previous five years; and

10.16 (c) at least one of the following conditions is present:

10.17 (1) diversity of ownership or defective or unusual conditions of title prevent the  
 10.18 free alienability of land within the area;

10.19 (2) there is inadequate infrastructure in the area;

10.20 (3) the crime rate in the area is higher than in the remainder of the county or  
 10.21 municipality;

10.22 (4) 30 percent of the tax parcels have had delinquent taxes or special assessments for  
 10.23 a period of two years or more prior to inclusion in the area; or

10.24 (5) negative market conditions exist in the area.

10.25 Subd. 4. **Environmentally contaminated area.** "Environmentally contaminated  
 10.26 area" means:

10.27 (1) any parcel that would be eligible for contamination cleanup grants from: (i) the  
 10.28 Department of Employment and Economic Development's contamination cleanup grant  
 10.29 account under section 116J.552, subdivision 3, or 116J.554, subdivision 2, clause (2);

10.30 (ii) the Metropolitan Council's tax base revitalization account under section 473.252;  
 10.31 (2) an area that qualifies as a soils condition district under section 469.174,  
 10.32 subdivision 19.

10.33 Subd. 5. **Inadequate infrastructure.** "Inadequate infrastructure" means any  
 10.34 publicly owned physical infrastructure including sanitary sewer systems, water systems  
 10.35 streets, wastewater treatment and pretreatment systems, storm water management systems  
 10.36 natural gas systems, and electric utility systems which are inadequate to serve either  
 11.1 existing or projected users in the blighted area because the system is undersized, do  
 11.2 not meet current design standards, or is significantly deteriorated.

11.3 Subd. 6. **Market area.** "Market area" means the geographic or locational  
 11.4 delineation of the market for a specific category of real estate.

11.5 Subd. 7. **Negative market conditions.** "Negative market conditions" are evidenced  
 11.6 by one or more of the following factors for similarly classified property: (1) market  
 11.7 are lower than in the remainder of the market area, are increasing at rates materially  
 11.8 than in the remainder of the market area, or are decreasing compared to the remainder  
 11.9 the market area; (2) vacancy rates are higher than in the remainder of the market area  
 11.10 or (3) other comparable evidence of negative market conditions in the blighted area  
 11.11 compared to the market area as a whole.

11.12 Subd. 8. **Public nuisance.** "Public nuisance" has the meaning given in section  
 11.13 609.74.

11.14 Subd. 9. **Structurally substandard.** "Structurally substandard" means a building  
 11.15 that contains defects in structural elements or a combination of deficiencies in esser  
 11.16 utilities and facilities, light and ventilation and fire protection including adequate  
 11.17 which significant defects or deficiencies justify substantial renovation or clearance.  
 11.18 building is not structurally substandard if it is in compliance with the building code  
 11.19 applicable to new buildings or could be modified to satisfy the building code at a cos  
 11.20 less than 20 percent of the cost of constructing a new structure of the same square fc  
 11.21 and type on the site. The municipality or condemning authority may find that a buildir  
 11.22 not disqualified as structurally substandard under the previous sentence on the basis  
 11.23 reasonably available evidence, such as the size, type, and age of the building, the av  
 11.24 cost of plumbing, electrical, or structural repairs, or other similar reliable evidenc  
 11.25 municipality or the condemning authority may not make such a determination without an  
 11.26 interior inspection of the property, but need not have any independent, expert apprais  
 11.27 prepared of the cost of repair and rehabilitation of the building. An interior inspect  
 11.28 of the property is not required, if the municipality finds that: (1) the municipality  
 11.29 condemning authority is unable to gain access to the property after using its best eff  
 11.30 obtain permission from the party that owns or controls the property; and (2) the evid  
 11.31 otherwise supports a reasonable conclusion that the building is structurally substanda  
 11.32 Items of evidence that support such a conclusion include recent fire or police inspect  
 11.33 on-site property tax appraisals or housing inspections, exterior evidence of deteriora  
 11.34 or other similar reliable evidence. Written documentation of the findings and reasons  
 11.35 an interior inspection was not conducted must be made and retained. Failure of a builc  
 12.1 to be disqualified under the provisions of this subdivision is a necessary, but not su  
 12.2 condition by itself, to determine that the building is substandard.

12.3 Sec. 15. **[469.403] LIMITATION ON USE OF EMINENT DOMAIN.**

12.4 Subdivision 1. **Limitation.** Notwithstanding any other provision of law, no  
 12.5 condemning authority under this chapter may exercise the power of eminent domain if th  
 12.6 property interest to be acquired is intended to be sold, transferred, or otherwise cor  
 12.8 to a person or nongovernmental entity without the power of eminent domain, unless the  
 12.9 condemning authority finds that the use of eminent domain is necessary to accomplish c  
 12.10 or more of the purposes in subdivision 2.

12.11 Subd. 2. **Purposes.** For purposes of carrying out the powers and authority provided  
 12.12 under this chapter, a condemning authority with the power of eminent domain under  
 12.13 this chapter may exercise that power to acquire land to accomplish one or more of the  
 12.14 following purposes:

- 12.15 (a) the possession, occupation, or enjoyment of the land by the general public or  
 12.16 by public agencies;
- 12.17 (b) to remedy a public nuisance;
- 12.18 (c) to carry out a program to remedy or improve an environmentally contaminated  
 12.19 area;
- 12.20 (d) to carry out a program to remedy or improve a blighted area; or
- 12.21 (e) to facilitate development of housing for low or moderate income persons as  
 12.22 defined under any federal, state, or local program.

12.23 Subd. 3. **Economic development.** The public benefits of economic development,  
 12.24 including an increase in tax base, tax revenues, employment, or general economic healt  
 12.25 shall not by themselves constitute a public purpose except as provided in subdivision

12.26 Subd. 4. **Exceptions.** Notwithstanding any other provision of law, a condemning  
 12.27 authority under this chapter may condemn property if one or more of the following form  
 12.28 of financial assistance are present:

- 12.29 (1) a grant awarded by a state agency for economic development related purposes, if  
 12.30 a single business receives \$200,000 or more of the grant proceeds;
- 12.31 (2) a grant award to local units of government or development authorities under  
 12.32 sections 116J.551, 116J.559, 116J.571, and 116J.8731;
- 12.33 (3) a loan or the guaranty or purchase of a loan made by a state agency for economic  
 12.34 development related purposes if a single business receives \$500,000 or more of the loa  
 13.1 proceeds;
- 13.2 (4) a reduction, credit, or abatement of a tax assessed under chapter 297A or 290  
 13.3 where the tax reduction, credit, or abatement applies to a geographic area smaller tha  
 13.4 entire state and was granted for economic development related purposes; or
- 13.5 (5) an appropriation by the legislature to acquire or better property, in whole or in  
 13.6 part, with the proceeds of state general obligation bonds authorized to be issued unde  
 article XI, section 5, clause (a) of the Minnesota Constitution.



13.7 Financial assistance does not include payments by the state of aids and credits under  
13.8 chapter 273 or 477A to a political subdivision.

13.9 Subd. 5. Disclosure. All applicants must indicate on applications for financial  
13.10 assistance under subdivision 4 whether the use of eminent domain may be necessary to  
13.11 acquire property for the project.

13.12 Sec. 16. EFFECTIVE DATE.

13.13 Sections 1 to 6 and 10 and 11 are effective for condemnation proceedings that  
13.14 are commenced on or after August 1, 2006. Sections 7, 8, and 9 are effective for all  
13.15 acquisitions in which the initial notice of eligibility is given on or after August 1,  
13.16 2006. Sections 12 to 15 apply to any property that is included in a redevelopment plan  
13.17 established on or after August 1, 2006.

13.18 Sec. 17. SUNSET.

13.19 Sections 14 and 15 expire January 1, 2009.

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# Senate

State of Minnesota

## **S.F. No. 2750 - Eminent Domain**

**Author:** Senator Thomas M. Bakk

**Prepared by:** Kathleen Pontius, Senate Counsel (651/296-4394) *K.P.*

**Date:** March 8, 2006

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**Section 1** 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**. The power to exercise eminent domain must be expressly granted and cannot be implied.

**Section 2** modifies and clarifies definitions. It also defines the terms "condemning authority," "abandoned property," "blighted area," "dilapidated building," "environmentally contaminated area," "public nuisance," "public service corporation," and "public use; public purpose."

**Section 3** 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 nondilapidated buildings unless it is absolutely necessary in order to remove dilapidated buildings.

**Subdivision 2** prohibits condemning authorities from taking uncontaminated parcels as part of a taking to remediate environmental contamination unless it is absolutely necessary in order to complete remediation.

**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** contains new provisions under which attorney fees must be awarded in certain condemnation proceedings. In cases where the final judgment or award for damages at any level in the eminent domain process is more than 20 percent greater than the last written offer of compensation made by the condemning authority before filing the petition, the court shall award the owner reasonable attorney fees, litigation expenses, appraisal fees, and other expert fees and related costs. In cases where the court determines that a taking is not for a public use or is unlawful, the court shall award the owner reasonable attorney fees and other related costs and expenses.

**Section 5** specifies the evidentiary standard to be used by the court 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 by clear and convincing evidence that the taking is necessary and for the designated public use. In any appeal of a district court determination of whether a taking is necessary and for a public use, the Court of Appeals must review the district court's determination of facts and law de novo.

**Section 6** contains special provisions governing compensation for loss of a going concern.

**Subdivision 1** defines "going concern."

**Subdivision 2** provides that in cases where a business or trade is destroyed by a taking, the owner must be compensated for loss of going concern unless the condemning authority establishes any of the following by clear and convincing evidence:

- (1) the loss is not caused by the taking;
- (2) the loss can be reasonably prevented by relocating the business or trade based on specified considerations; or
- (3) compensation for the loss will be duplicated in the compensation otherwise awarded to the owner.

**Subdivision 3** specifies the procedure applicable when an owner seeks compensation for loss of going concern. The damages must first be determined and reported by the commissioners as part of the compensation due the owner. The owner must notify the condemning authority of intent to claim compensation for loss of going concern no later than 30 days before the hearing. The commissioners' decision may be appealed to the district court.

**Section 7** establishes minimum compensation in cases where an owner must relocate. The amount of damages must, at a minimum, be sufficient to purchase a similar house or building and not less than the condemning authority's payment or deposit.

**Section 8** 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 9** provides that **sections 4, 6, 7, and 8** do not apply to public service corporations.

**Section 10** contains public hearing requirements applicable to local governments.

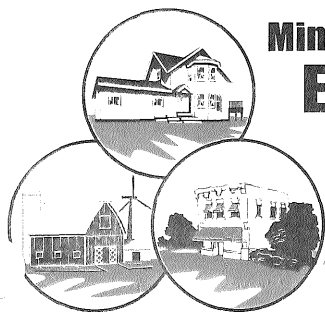
**Subdivision 1** defines the terms “local government” and “agency.”

**Subdivision 2** contains the public hearing requirements and specifies notices that must be given, opportunity to present testimony, and other hearing requirements. At the next regular meeting of the local government that is at least 30 days after the public hearing, it must vote on the question of whether to authorize the use of eminent domain to acquire the property.

**Section 11** 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 12** provides that the act is effective the day following final enactment and applies to condemnation proceedings commenced on or after March 1, 2006.

KP:cs



# Minnesotans for Eminent Domain Reform

200 Lothenbach Avenue  
West St. Paul, MN 55118  
(651) 291-2400  
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Government should not take from A and give to B just because B promises to pay more taxes.  
But that's the law in Minnesota!

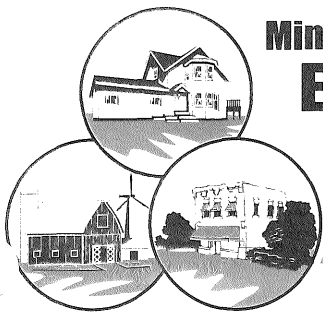
## The Minnesota Legislature Must Pass the Johnson/Bakk Eminent Domain Reform Bill HF 2846 to Protect Homes, Farms, and Small Businesses.

- **A fair definition of public use.** The Johnson/ Bakk Reform bill limits eminent domain to property that will be:
  1. owned by the government (roads, schools, government buildings, etc.)
  2. for the functioning of public service corporations (public utilities, railroads, etc.)
  3. to remedy blighted, environmentally contaminated, abandoned, or nuisance properties.
- **A sensible definition of blight.** The Johnson/ Bakk Reform bill creates a clear and common-sense test for "blight":
  1. property is in urban use
  2. 50% or more of the buildings in the blighted area are "dilapidated"  
Buildings are "dilapidated" when:
    - the property has been cited for a building code violation,
    - the violation has gone un-remedied, and
    - the building is unfit for human use because it is unsafe.
- **Judicial Review of the Constitutional Right to Private Property.** The Johnson/ Bakk Reform bill requires the government to prove by **clear and convincing evidence** that they are properly using eminent domain when taking private property to remedy "blight." Under current law, the court gives almost total deference to the municipality's determination of "blight," which is why abusive and questionable takings have been allowed in Minnesota.
- **Just compensation:**
  1. Property owners should be entitled to attorney's fees when they can prove that eminent domain was *not* for a public use
  2. Property owners should be entitled to attorney's fees when the government makes a final offer of compensation that is substantially lower than the property is worth.
  3. Businesses should be compensated for the "loss of going concern" in addition to the value of the land when a business operated on the property is totally destroyed by the government taking.



**STAND YOUR GROUND**

PROTECT HOMES, FARMS AND BUSINESSES FROM UNFAIR TAKINGS!



**Minnesotans for  
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**HF 2750 (Bakk) is Supported by:**

**MN Auto Dealers Association**  
**MN Farm Bureau**  
**Institute for Justice**  
**NAACP of Minneapolis and St. Paul**  
**Minneapolis Urban League**  
**MN Farmers Union**  
**Minnesota Hmong Chamber of Commerce**  
**Hispanic Chamber of Commerce of MN**  
**MN Petroleum Marketers Association**  
**National Federation of Independent Business**  
**St. Paul Black Interdenominational Ministerial Alliance**  
**MN Teamsters D.R.I.V.E.**  
**MN Alliance of Automotive Service Providers**  
**Outdoor Advertising Association of MN**  
**Hospitality MN**  
**MN Trucking Association**  
**MN Family Council**  
**MN Manufactured Housing Association**  
**MN State Cattlemen's Association**  
**MN Association of Wheat Growers**  
**Highway Construction Industry Council**  
**And hundreds of individual citizens!**



**STAND YOUR GROUND**

PROTECT HOMES, FARMS AND BUSINESSES FROM UNFAIR TAKINGS!

**Responsible Eminent Domain  
HF 2846/SF 2750 vs. HF 2895/SF 2694**

	<p align="center">IJ/MADA Bill Provisions HF 2846/SF 2750</p>	<p align="center">Local Government Bill Provisions HF 2895/SF 2694</p>
<p><b>Blight</b></p>	<p>Cities can only use eminent domain to address a “dilapidated building” that is <b>“unfit for human use, because it is unsafe, structurally unsound, or lacking in basic equipment”</b> – essentially only structures that are unfit for human habitation.</p>	<p>Cities may use eminent domain to remedy or improve a blighted area, and must meet a <b>more rigorous, multi-part test to establish a blighted area</b>. A city must find that at least 50% of the buildings in the area are structurally substandard or abandoned; that 30% of the parcels are environmentally contaminated; or that 20% of the buildings are structurally substandard and 30% are obsolete. Additionally, the area must have title defects, inadequate infrastructure, high crime, delinquent taxes, or negative market conditions.</p>
<p><b>Assemblage</b></p>	<p>Cities can only use eminent domain to acquire “non-dilapidated” buildings if the acquisition of those properties is <b>“absolutely necessary” in order to remove “dilapidated” buildings</b> – essentially limiting takings to those situations of a common wall or adjacent property.</p>	<p>Cities may use eminent domain to acquire non-blighted buildings if at least 50% of the other buildings in the area meet the criteria for establishing blight.</p>
<p><b>Local Control</b></p>	<p>Decisions about community revitalization and local priorities are taken out of the hands of local elected officials and community residents and placed in the courts.</p>	<p>Local officials who understand the particular needs of a community are trusted to make decisions within the parameters established in state law.</p>

Prepared By: Kathleen Pontius  
Senate Counsel  
March 8, 2006

### **Minnesota Law on the Use of Eminent Domain for Economic Development**

To a large extent, the Minnesota Supreme Court has followed United States Supreme Court precedent in determining what constitutes a public use for purposes of eminent domain. Language similar to the Takings Clause of the United States Constitution is contained in the **Minnesota Constitution, Article I, Section 13**, which provides that “Private property shall not be taken, destroyed or damaged for public use without just compensation therefor, first paid or secured.” One of the leading Minnesota cases dealing with the use of eminent domain power for economic development is *City of Duluth v. State*, 390 N.W. 2d 757 (Minn. 1986). It involved condemnation proceedings by the City of Duluth to acquire a food processing plant property for use as a paper mill. The court held that the goal of revitalizing a deteriorating urban area and alleviating unemployment satisfied the public use requirements of the federal and state constitutions and that the evidence supported a determination by the city that the condemnation of the land was necessary for the paper mill project.

In its analysis, the court first considered the standard of review to be applied. Consistent with federal case law, it noted that the role of the judiciary in reviewing a legislative judgment (such as the decision of the City of Duluth that the condemnation served a public purpose) is an extremely narrow one and judicial deference must be given to a determination that land is being condemned for a public use. As long as there is some evidence in the record that justifies this conclusion, the court should not second guess the legislative judgment. Courts may interfere only in cases where the governing body’s decision appears manifestly arbitrary or unreasonable.

With respect to what constitutes a public use, the court noted that in light of the deferential scope of review, it has construed the words “public use” broadly. Historically, the term “public use” has been used interchangeably with “public purpose” so that even though a public entity uses eminent domain power to give land to a private entity, the condemnation may still be constitutional if a public purpose is furthered. For example, the court previously upheld a condemnation of land for the construction of a privately owned downtown mall. *City of Minneapolis v. Wurtele* 291 N.W. 2d 386 (Minn. 1980). In that case, the court deferred to a city council determination that a downtown mall was essential to maintaining a viable business district. In the *City of Duluth* case, the court observed that the revitalization of deteriorating urban areas and alleviation of unemployment are public goals and the fact that the use of eminent domain power will also benefit private interests does not make that use unconstitutional as long as the predominant purpose being furthered is a public one.



The last part of the court's analysis examined whether the condemnation was necessary for the project. This is one area where the Minnesota Supreme Court has added an additional test that is not specifically enumerated under federal case law. In part, this is based on both the Minnesota Constitution as well as language in **Minnesota Statutes, section 117.075**, which states that the district court shall appoint three commissioners to evaluate condemned property only after a determination that "the proposed taking shall appear to be **necessary** and such as is authorized by law." (**Minnesota Statutes, chapter 117**, is the general eminent domain law that lays out the procedures that must be followed in all cases where eminent domain power is exercised by a government entity, subject to limited exceptions in special statutes.) The court noted that previous cases determined that the required necessity is not absolute necessity, but it is enough to find that a proposed taking is reasonably necessary or convenient for furtherance of a proper public purpose. The court found that there was a sufficient evidentiary basis for the conclusion of the City of Duluth that there was necessity and a prima facie case of arbitrariness was not established.

In concluding its analysis of the public purpose and necessity of the proposed taking, the court made an interesting observation:

It is also argued that the legislature and the courts have become far too lenient in allowing governmental units to exercise eminent domain in urban renewal projects, particularly where private property is condemned and then turned over to a new private venture. That argument may have some merit. However, after permitting so much new development in the Twin Cities area where an economic boom may be said to be in progress, it hardly seems appropriate to apply a more stringent rule to the City of Duluth and to northeastern Minnesota where economic depression and chronic unemployment have persisted for over a decade. *City of Duluth v. State*, 390 N.W.2d 757, at 767.

Another major eminent domain case that received a lot of publicity and was the subject of discussion in the legislature involved the condemnation in the City of Richfield by its housing and redevelopment authority for the construction of the Best Buy headquarters. In particular, Walser Auto Sales challenged whether the taking was for a public use and purpose and whether it was necessary. *The Housing and Redevelopment Authority in and for the City of Richfield v. Walser Auto Sales, Inc.*, 630 N.W. 2d 662 (Minn. App. 2001); 641 N.W. 2d 885 (Minn. 2002). The United States Supreme Court declined to review the case. It is interesting to note that the only analysis and decision regarding the public purpose issue in the case is in the Minnesota Court of Appeals decision. On appeal to the Minnesota Supreme Court, the opinion only analyzed an ancillary procedural issue as to whether the public purpose challenge was moot. With respect to the substantive issue as to whether there was a public purpose for the taking, the supreme court was evenly divided and the decision of the Court of Appeals was left in place (Justice Lancaster did not participate in the court's proceedings, which left an even number of justices split on the issue).

The *Walser* case involved a condemnation petition brought by the Richfield Housing and Redevelopment Authority (HRA) for condemnation of land containing automobile dealerships in

connection with a redevelopment project to build the corporate headquarters for the Best Buy company. The Court of Appeals found that the condemnation served a public purpose because it was reasonably necessary or convenient for the furtherance of the HRA's redevelopment project to eliminate blight and structurally substandard buildings. Even though a public entity turns land over to a private entity for use by that entity, a condemnation will be constitutional if a public purpose is furthered by the transfer. The court also held that the finding of the district court that the taking was necessary was not in error. It observed that based on prior case law, absolute necessity is not required and it is enough to find that a taking is reasonably necessary or convenient for furtherance of a proper purpose. A challenge to the necessity of a condemnation will not succeed by merely suggesting alternatives.

The Court of Appeals observed that the scope of review in condemnation cases is very narrow. The district court's decision that public purpose and necessity have been established is a finding of fact that will not be reversed on appeal unless clearly erroneous. In addition, the district court itself must give great weight to the determination of the condemning authority that the taking serves a public purpose. The Court of Appeals cited the *City of Duluth* case as emphasizing the deferential scope of review and noting that the term "public use" has historically been used interchangeably with the term "public purpose." Minnesota Statutes authorized the HRA to condemn real property if it was necessary to carry out a redevelopment project, which is defined as a work or undertaking to acquire blighted areas and other real property for purposes of removing, preventing, or reducing blight, blighting factors, or the causes of blight. There was sufficient evidence in the record to support a finding that the property in question was a blighted area for purposes of the HRA statute.

Related litigation involving the Richfield HRA redevelopment project addressed the issue of whether a tax increment financing district was properly established in the area that included the land acquired from Walser as part of the condemnation proceeding. *Walser Auto Sales, Inc. v. City of Richfield*, 635 N.W. 2d 391 (Minn. App. 2001). (The Court of Appeals decision was affirmed without opinion by the Minnesota Supreme Court.) This opinion is particularly noteworthy because the court distinguished the public purpose analysis necessary for establishment of a tax increment finance district from the analysis that is applied to determine whether a public purpose exists for the exercise of eminent domain power. Creation of a tax increment financing district is specifically regulated by statute, rather than being a creature of constitutional law as interpreted by the court, and the local governing body must comply with the statutory prerequisites for exercising this financing tool. The district court had dismissed the complaint brought by Walser challenging the use of tax increment financing to fund the redevelopment project. The Court of Appeals reversed and remanded the case to the district court.

The opinion noted that the standard of review for a public purpose determination for creation of a tax increment financing district is different than the standard used in condemnation proceedings. In condemnation proceedings, the only inquiry is whether some evidence exists that a taking serves a public purpose. Even though a court may be extraordinarily deferential to a city's determination regarding whether an expenditure serves an underlying or **primarily** public purpose, the statute

requiring that the public purpose be the underlying primary purpose means that a greater amount of evidence is required. In addition, the court must consider not only the quantity but the quality of the analysis and evidence justifying the finding of a public purpose. A judicial decision as to whether the city complied with the TIF law does not involve the type of legislative determination to which courts give deference in eminent domain proceedings. The statute sets out the standard to be applied and the only question is whether the city complied with the law. In finding that the statutory requirements had not been met, the court cited numerous procedural as well as substantive problems with the creation of the tax increment financing district. Based on the record, the court found that “several aspects of the TIF district creation were fundamentally flawed.” Note that this project involved not only the condemnation of the Walser property but residences in the adjoining neighborhood. It was the inclusion of this residential area in the tax increment financing district that was particularly problematic for the Court of Appeals. However, these parcels were not the subject of the litigation in the separate proceeding challenging condemnation, since apparently most of these property owners were voluntarily bought out.

In its conclusion with respect to the creation of a tax increment financing district, the Court of Appeals observed:

Tax increment financing is a power granted to municipalities by the Legislature to be exercised only within the constraints of the legislative fiat. Exhibiting a particular municipal meanness, respondents completely ignored the statutory prerequisites for exercise of this financing tool. The provisions of **Minn. Stat. sec. 469.1771 (2000)** are intended to provide a means to insure that such a blatant disregard for limits on municipal authority will be answerable.

#### **Potential Impact of *Kelo* on Minnesota Law**

It is difficult to assess the impact of the *Kelo* decision on future eminent domain cases in Minnesota but here are a few general observations. In the *City of Duluth* case, in which the Minnesota Supreme Court first affirmed the use of eminent domain power for economic development purposes consistent with federal precedent, the scope of the property that was the subject of the proceeding was fairly narrow (the proceeding involved condemnation of a food processing plant that was over 100 years old and in dilapidated condition to make way for the construction of a paper mill; other private property was also involved but not the subject of the litigation). This case is almost 20 years old and the makeup of the Minnesota Supreme Court has completely changed since that time. In addition, as noted earlier in this memo, even in the *City of Duluth* case the court recognized some troubling aspects of the use of eminent domain power for urban renewal projects, particularly where private property is condemned and turned over to a new private venture. However, in light of prior precedent, particularly with respect to activities in the Twin Cities, the court did not feel it was in a position to disallow the use of eminent domain power in this case.

As noted earlier, in the *Walser* condemnation case, the Minnesota Supreme Court was evenly divided on the propriety of the condemnation and thus let the decision of the Minnesota Court of Appeals stand. It is possible that a different conclusion may have been reached if the individuals challenging the condemnation had been the residential property owners, rather than the Walser auto dealership (particularly since these properties were the focus of the concerns of the Minnesota Court of Appeals in concluding that a tax increment financing district was not properly established). The *Kelo* decision may provide greater precedent for upholding a condemnation in a similar case but nothing would prevent the Minnesota Supreme Court from taking a more stringent view with respect to the exercise of eminent domain power under the Minnesota Constitution.

It is important to remember that in the area of personal liberties or freedoms, the federal constitution establishes a floor above which individual states may rise. State legislatures may enact statutory provisions that are more protective in terms of limiting the use of eminent domain power or state supreme courts may recognize an independent state constitutional right that is greater than the protections afforded by the United States Constitution. For example, in *Kelo*, the court stated:

In affirming the City's authority to take petitioners' properties, we do not minimize the hardship that condemnation may entail, notwithstanding the payment of just compensation. We emphasize that nothing in our opinion precludes any State from placing further restrictions on its exercise of the takings power. Indeed, many States already impose "public use" requirements that are stricter than the federal baseline. Some of these requirements have been established as a matter of state constitutional law, while others are expressed in state eminent domain statutes that carefully limit the grounds upon which takings may be exercised. As the submissions of the parties and their *amici* made clear, the necessity and wisdom of using eminent domain to promote economic development are certainly matters of legitimate public debate. This Court's authority, however, extends only to determining whether the City's proposed condemnations are for a "public use" within the meaning of the Fifth Amendment to the Federal Constitution. Because over a century of our case law interpreting that provision dictates an affirmative answer to that question, we may not grant petitioners the relief that they seek.

In addition, subject to the scope of federal power and jurisdiction, Congress may impose limits on the use of eminent domain power by states and their subdivisions. For example, the recently enacted Omnibus Transportation and Housing Funding Bill (H.R. 3058) contains a prohibition on the use of funds from the act for projects involving the use of eminent domain unless it is for a public use and further specifies that public use does not include economic development that primarily benefits private entities. It also requires the Government Accountability Office, in consultation with other entities, to conduct a study on the nationwide use of eminent domain.

The final point to remember is that these cases are very fact-specific and there is certainly room for courts to reach different opinions under similar but distinguishable circumstances. For example, one case might uphold a condemnation proceeding whereas another case may find a similar

condemnation to be unlawful because of differences in the nature of the planning process or deliberation that was involved in the governing body's decision to proceed with eminent domain.

A recent eminent domain decision issued by the Minnesota Supreme Court is noteworthy because of a concurring opinion discussing the scope of judicial review of a condemning authority's finding that a condemnation is for a public purpose. See *Lundell v. Cooperative Power Association* (opinion filed January 5, 2006). The case addressed a somewhat narrow issue as to whether a condemnation for the purpose of obtaining fee title to land was necessary when the condemning authority already had a leasehold interest. Justice Paul H. Anderson, joined by Justice Page, wrote a concurrence in which he stated:

I concur in the opinion of the Court. I write separately to temper, for my own part, the Court's very narrow characterization of our ability to exercise judicial review over what constitutes a public purpose sufficient to warrant the taking of the property.... While the case before us today does not provide the proper occasion for an in-depth analysis of what type of takings case might require a more demanding standard of review, this Court should not foreclose the possibility that a more stringent standard than what we articulate today might be appropriate under certain circumstances. Neither constitution permits a taking that confers benefits on particular, favored private entities only with incidental or pretextual public benefits; yet, the possibility definitely exists that such a case will come before us. If and when such a case comes before us, we must retain the ability to apply a sufficiently demanding level of scrutiny such that the constitutional right of the people of our state to remain secure in the ownership of private property may be protected.

This is remindful of United States Supreme Court Justice Kennedy's concurring opinion in *Kelo*. He joined in the majority decision but added further observations relating to the standard of review that should be applied, particularly in cases where eminent domain power is being exercised to acquire property that would subsequently be used by a private party. He suggested the use of a "meaningful rational basis" review in these cases, although found that on the facts of the *Kelo* case, the exercise of eminent domain power would have survived that test.

In conclusion, I think the *Kelo* decision has raised legitimate questions with respect to the exercise of eminent domain power for economic development purposes. However, I do not think the case necessarily stands for a general proposition that government bodies may use eminent domain to acquire property that is not blighted or substandard and transfer it to another private property, simply because the benefitting party may generate more tax revenue or attract businesses and thereby promote economic development. On the other hand, as Justice O'Connor observes in her dissenting opinion in *Kelo*, "[n]othing is to prevent the State from replacing any Motel 6 with a Ritz-Carlton, any home with a shopping mall, or any farm with a factory". Regardless, given the prior case law in Minnesota and the fact that the Minnesota Supreme Court could not reach a consensus opinion in the *Walser* case, it is possible that a case similar to *Kelo* could have different results in Minnesota courts.

## *Case Study*

**White Bear Lake**

**Ramsey County**

Population 24,909

*Before*



## *Case Study*

### **White Bear Lake**

**Ramsey County**

Population 24,909

### *Before*



## *Case Study*

### **White Bear Lake**

**Ramsey County**

Population 24,909

### *Home Left Intact*





## *Case Study*

### **White Bear Lake**

**Ramsey County**

Population 24,909

*After*



## *Case Study*

### **White Bear Lake**

**Ramsey County**

Population 24,909

*After*



## *Case Study*

### **White Bear Lake**

**Ramsey County**

Population 24,909

*After*



## *Case Study*

### **White Bear Lake**

**Ramsey County**

Population 24,909

#### **The Project**

This project began in 1988 and was part of a large, three-phase downtown redevelopment project. The project involved an area along Highway 61, largely located in an old railroad right-of-way, that the community identified as in need of revitalization. In particular, community members raised concerns about a dilapidated railroad depot, environmental contamination, unsightly abandoned storage tanks, and several blighted metal buildings. The community, as part of their strategic planning process, had also identified the need for more senior housing.

This downtown area has now been successfully redeveloped. The depot has been restored and is now home to a city and railway museum. A three-story office building accommodates both long-term White Bear Lake businesses as well as newcomers. A long-needed city hall with community meeting spaces was built. And a new 60-unit market-rate senior housing complex has been constructed.

#### **Impacts on Property Owners**

Over the course of the project, the City acquired and relocated 32 businesses and individuals, with most expressing that they have moved to better places. Nine businesses, then located on the old railroad property, held leases with the railroad that included 30-day termination clauses. The railroad sold the property to the City, which had the legal right to evict all tenants after 30 days. Instead, the City offered these businesses the cash value of a 15-year lease, relocation benefits, and to work with each business to help them find better locations. Every one of the businesses happily accepted this offer. Eight of the nine businesses relocated within White Bear Lake and now own, rather than lease, their business properties. The ninth business was owned by an older gentleman who used his settlement money to retire.

Eminent domain was initiated on two parcels and considered on a third. The first property that involved eminent domain was a bar. The initial project plan only required a portion of the bar's parking lot (seven stalls) and involved creating a new public parking lot across the street that would be available to bar patrons. The owner feared that the development would include businesses that would compete with him. He claimed that the loss of the parking stalls would constitute a complete taking. The City made an offer for the entire property, which was accepted, so the eminent domain case was dismissed. The City, which continues to own the property, leased the bar back to the prior owner and now leases it to the prior owner's son. A previously vacant portion of the building has been turned into a family restaurant. The two businesses are each successful and have separate clientele.

The second property that required the exercise of eminent domain was a single-family rental home. The 60-unit senior apartment building complex and three-story office building required acquisition of eight houses. Six were willing sellers – some had even approached the city during an earlier phase of the project to request that the City purchase their property (thus avoiding the cost of paperwork and realtor fees).

## **White Bear Lake**

**Ramsey County**

Population 24,909

One property owner would not sell, wanting twice the City's appraisal amount. His rationale was that his value should be based on what the developer would pay to get the deal done since other parcels had already been purchased. The City Council did not think it would be fair to give him a significantly higher settlement than the other property owners, as the properties in question were very similar. In the end, the City offered him the appraised value plus 75% of the estimated costs to complete the eminent domain process. He accepted the offer so the case was dismissed.

In the case of the other single-family home, eminent domain was considered but never commenced. As part of the public input process, citizens expressed concern about the City acquiring the property, as it was the home of an elderly resident. The City Council reacted accordingly. The City negotiated with the family of this 90-year-old woman and came to an agreement whereby she would sell her property but remain in the house as long as she wished. The project plans were modified to build around her, and the City made improvements to her property. She received two-thirds of the settlement money up-front. The other third was paid to her estate following her death two years later.

### **Impacts on the Community**

White Bear Lake's residents and businesses have responded very favorably to the outcomes of the project. They were happy to see the elimination of the contaminated areas and blighted buildings, they are pleased that the project addresses the community priority of senior housing, and they have a great deal of pride in their revitalized downtown area.

## *Case Study*

### **Columbia Heights**

**Anoka County**

Population 18,698

*Before*



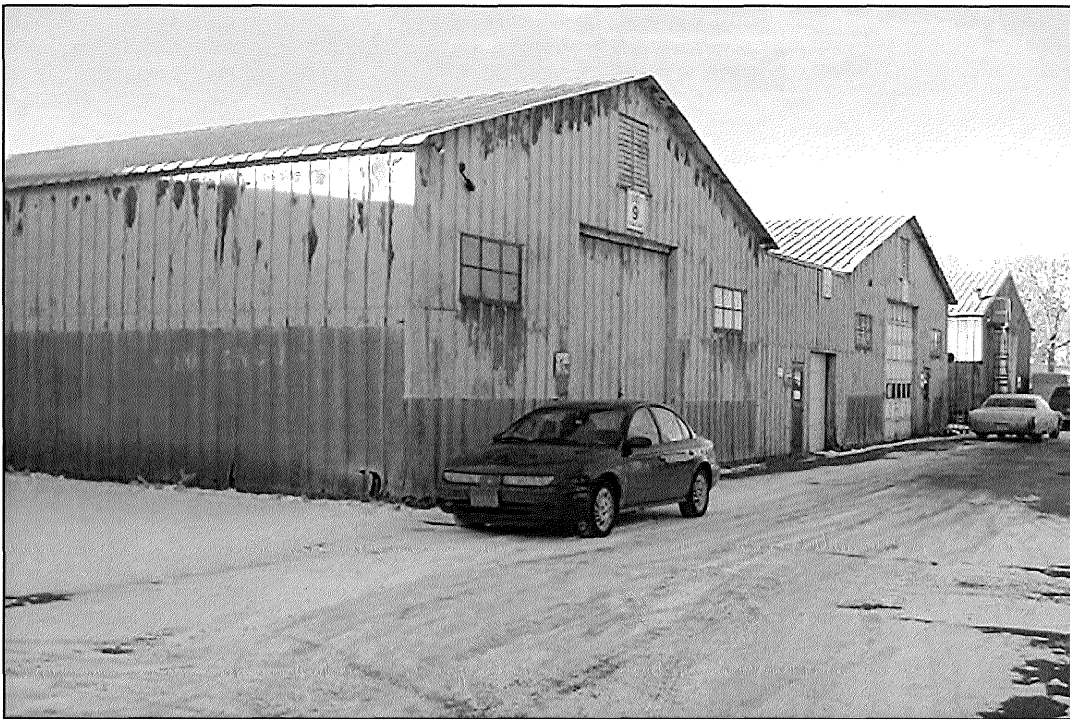
*Case Study*

**Columbia Heights**

**Anoka County**

Population 18,698

*Before*



## *Case Study*

### **Columbia Heights**

**Anoka County**

Population 18,698

### *Before*





*Case Study*

**Columbia Heights**

**Anoka County**

Population 18,698

*Before*



## *Case Study*

### **Columbia Heights**

**Anoka County**

Population 18,698

### *Clean-up In Progress*



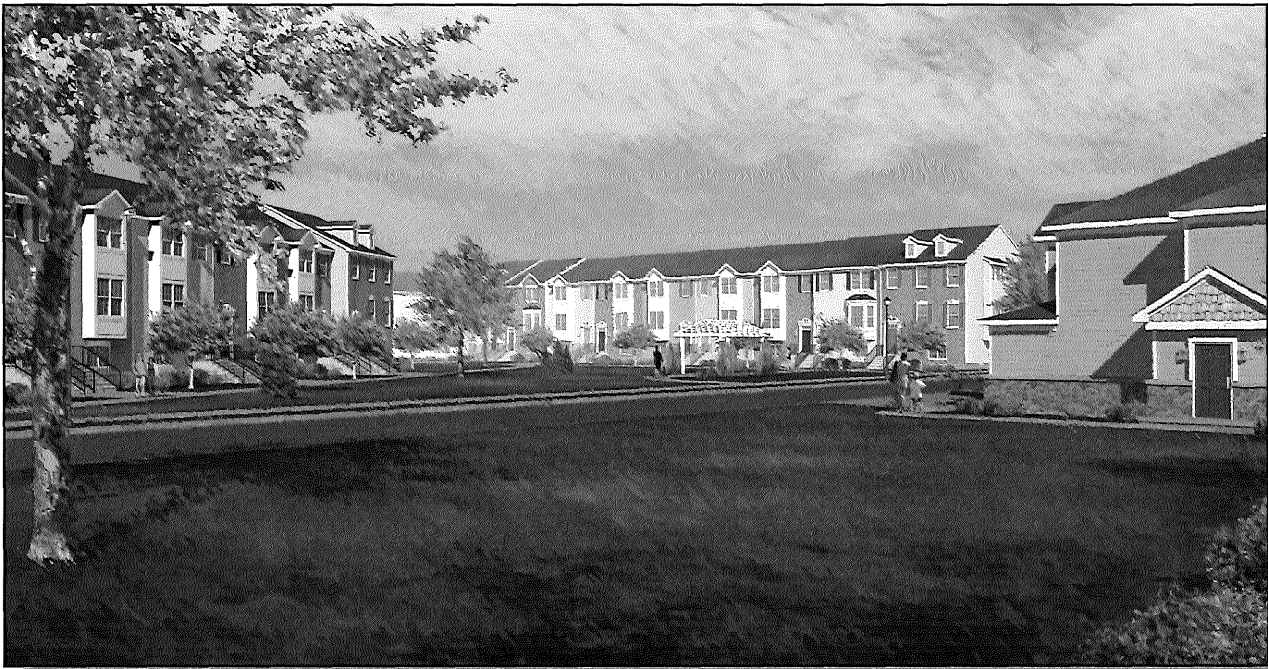
## *Case Study*

### **Columbia Heights**

**Anoka County**

Population 18,698

### *Plans for After*



## *Case Study*

### **Columbia Heights**

**Anoka County**

Population 18,698

### *After In Progress*



## *Case Study*

### **Columbia Heights**

**Anoka County**

Population 18,698

#### **Background**

Nine buildings on a 29-acre industrial site in Columbia Heights were blighted and underutilized, and the property had extreme soil and groundwater contamination. The entire site was an eyesore in the community and generated complaints from residents. In 2000, the city declared that redeveloping the site was its top priority.

The property – which is bounded by residential single-family homes on two sides – was contaminated with chlorinated solvents, foundry waste (metals), and petroleum products. These contaminants are extremely harmful to people and to the environment. At least 128,123 cubic yards of contamination is being removed from the site. Removing the contaminated soil alone will require 7,111 truckloads. If the trucks were lined up end to end they would extend for 73 miles, approximately from Minneapolis to Mankato. The clean-up work cost approximately \$5 million. These costs were funded by grants from the Department of Employment and Economic Development and the Metropolitan Council.

#### **The Process**

The eminent domain process was initiated because the developer was unable to negotiate with seven of the eight property owners. The appraisal process for these seven properties resulted in appraisals that were much higher than the assessed market value. The city stressed this as a cost to cities using eminent domain and a benefit to property owners.

The settlements reached were significantly higher than the appraised values. In one example, the property's market value was \$168,000, the appraised value was \$438,000, and the settlement was \$500,000. In addition, the high cost of contamination remediation was not used to reduce the acquisition price of the property. For example, two properties had contamination clean-up costs that exceeded the market value of the property, yet the property owners received the full market value.

Negotiated settlements were reached with all but one owner. The parcel is one-third acre in size, out of a 29-acre project. The City is proceeding with, but has not yet completed, the condemnation process on this property. The purpose for the condemnation is to build a public road that is needed to serve the redevelopment. The property owner has been paid \$320,000 for the real estate, which is assessed for tax purposes at \$158,900. The owner also received \$165,000 for trade fixtures, and \$162,912 in relocation benefits. All totaled, the property owner has received \$647,912 to date. Also, at the request of the owner, the City allowed him to remain in the building rent-free for 6 months while he built a new building in Coon Rapids. The property owner was compensated fairly, helped to relocate and is now operating in Coon Rapids.

## **Columbia Heights**

### **Anoka County**

Population 18,698

#### **Benefit to the Community**

This industrial park redevelopment will provide many benefits to the residents of Columbia Heights, none of which would be realized without the tool of eminent domain. The community benefits include:

- Removing 128,000 cubic yards of contamination, making the property safe for people and the environment.
- Constructing 550 new, for-sale housing units, 15,000 square feet of neighborhood commercial (retail) space, and a new parkway.
- Ensuring between 10% and 20% of the new homes will be affordable according to the Metropolitan Council definition.
- Providing housing for seniors who can no longer manage a single-family home.
- Providing construction jobs for 5 years, as that is how long it will take to complete the project.
- Increasing the property values from \$5,200,000 to \$125,000,000.
- Increasing annual total property taxes from \$47,000 to \$1,700,000, which represents a 12% citywide increase in tax base.
- Making the School District operating levy more affordable by adding new market value.
- Improving the image of the City as a desirable place to live work and play.

On balance, the City treated the property owners more than fairly, while at the same time ensuring significant benefits for the current 18,501 residents as well future residents.

Tax Supported  
Special Report

## Beyond Kelo: Reactions, Responses, and Credit Quality

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### ■ Summary

The U.S. Supreme Court ruling in Susette Kelo, et al. v. City of New London, CT, et al., which affirmed a local government's ability to obtain property through eminent domain for economic development purposes, brought strong public response critical of the decision. Shortly after the decision, attempts to legislate restrictions to eminent domain powers have begun at both the federal and state levels. If these efforts prove successful and eminent domain powers are restricted to a significant degree, Fitch Ratings believes municipal credit quality could be restrained or negatively affected. By impairing a state or local government's efforts toward economic development, such legislation, if enacted, may limit opportunities for credit quality improvement and rating upgrades. Moreover, Fitch believes that restrictive legislation has the potential to contribute to a diminution of credit quality over a longer term, in that the proposed laws limit a state or local government's ability to respond to economic blight or weakened conditions.

In the near term, however, Fitch does not expect rating downgrades as a result of legislation restricting the use of eminent domain in most situations. This expectation of near-term stability comes from Fitch's criteria, which base ratings on revenue provided by existing, tax-generating properties rather than resources anticipated from future growth. In fact, while debt ratings look into the future, Fitch will not assign an investment-grade rating unless debt service is covered fully by obligated revenues as they exist at the time of the rating.

The impact of restrictive legislation mostly will affect development-reliant credit types, such as tax allocation bonds, special assessment debt, and obligations structured by state-specific structures such as Mello-Roos debt in California and municipal utility district issuance in Texas. However, the longer-term effects of limiting economic development efforts could impact both development-related debt and broader-based securities issued by the municipality, such as general obligation bonds, lease obligations, and utility revenue bonds.

### ■ Background

In ruling in favor of the City of New London, the U.S. Supreme Court stated that "the governmental taking of property from one private owner to give to another in furtherance of economic development constitutes a permissible 'public use' under the Fifth Amendment" of the U.S. Constitution. In the June 23, 2005 decision, the court went on to say that states could restrict such action. The decision was made on a narrow vote (five to four), an early indicator of the controversy that has ensued.

on private sector interest, the availability of capital, and the success risk inherent to any business venture.

Prior to the Kelo decision, laws existed in at least 10 states restricting eminent domain powers with regard to economic development. While a Utah law forbids an economic development entity from using eminent domain to transfer property from one private owner to another, most existing laws are specific in nature and enable sound bond financings secured by development-related revenue. The current restrictions generally only permit eminent domain use for economic development to eliminate blight. In California, municipally sponsored redevelopment agencies can use this power only in areas determined to be blighted and designated as a project area with an approved redevelopment plan. While the definition of blight is determined by each state and is broad in some cases, these restrictions prevent forced private property acquisitions from taking place randomly throughout an area. Also, the existing laws prevent municipalities from using eminent domain to acquire properties simply because a use preferred over the current one is presented.

Citizens in particular have expressed strong concerns that they could be forced to relocate their businesses and residences so that the land can be put to use in a manner perceived to be of greater benefit to the community as a whole. Regardless of legislation that has or may be enacted to limit this practice, the strong public response to the Kelo decision brings into question the political and practical feasibility of acquiring property in this manner.

### ■ Rating Implications of Eminent Domain Restrictions

Three elements of the Kelo decision stand out as having implications for municipalities involved with economic development and, as a result, the debt they issue. First, a key factor for the U.S. Supreme Court was the existence of the land in a defined and established redevelopment project area. Second, the decision clearly stated that economic development is a legitimate public use, thereby involving the Fifth Amendment of the U.S. Constitution. In fact, in the Connecticut Supreme Court ruling, the opinions stated that the promise of additional tax revenue justified the city's use of eminent domain. Lastly, the U.S. Supreme Court's decision leaves room for additional action at the federal, state, and local levels. The ruling in no way prevents Congress or states from enacting laws limiting eminent domain powers

and enables lower courts to continue to take on cases challenging eminent domain actions.


As stated previously, Fitch does not expect rating downgrades as an immediate response to legislation restricting eminent domain powers in most cases. Rather, Fitch views the potential for credit quality improvement as possibly limited by such legislation. Also, Fitch is concerned that broad and very restrictive legislation could be enacted that would dramatically reduce eminent domain powers and thereby limit a state's or municipality's ability to meet basic community needs such as public safety, utility services, education, and public health. Also, given the rising interest in private sector participation in public infrastructure projects, such relationships could be impeded since these partnerships can accrue benefits to the private entity.

Over the long run, municipalities facing broad eminent domain restrictions could be at a competitive disadvantage compared with entities that can site facilities key to vital services more easily. Moreover, if municipalities lose eminent domain authority in some or all instances, the end result may be that properties become more expensive and take longer to acquire, which could make the public use economically unfeasible. These outcomes over the long term could contribute to a decline in credit quality.

To date, eminent domain legislative efforts have focused on its use for economic development. If restrictions apply only to this use, Fitch believes the possible negative rating implications would be less severe and longer term in nature. Specific restrictions could hinder an existing economic revitalization plan, which in turn could restrict growth and forestall or prevent a rating upgrade for bonds issued in connection with the redevelopment project. Also, over the long run, a municipality's overall economic gains could be limited by the eminent domain restrictions. For areas where such legislation is enacted, Fitch will review the new laws, focusing on their direct and indirect impact on existing development plans, projects under way, and future growth goals.

Fitch will continue to monitor pending legislation, initiatives, and other actions aimed at curtailing eminent domain use or significantly altering the process. While elected officials, civic leaders, the development community, and citizens will look at many aspects of these laws, including public policy, property owner and citizen impact, and fairness, Fitch's review will



An outline map of the state of Minnesota, serving as a background for the logo text.

LMC

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**Senate**  
State of Minnesota

**S.F. No. 2432 - Eminent Domain**

**Author:** Senator Betsy L. Wergin

**Prepared by:** Kathleen Pontius, Senate Counsel (651/296-4394) *K.P.*

**Date:** March 8, 2006

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This bill amends eminent domain law to define "public use" for purposes of when the power of eminent domain may be exercised.

Public use would be limited to:

- (1) possession, occupation, or enjoyment of the taken property by the general public or a public body;
- (2) acquisition of an interest in property by a public service corporation or common carrier that is essential to its duties, function, or purpose; or
- (3) acquisition of property necessary to protect the public health or safety.

Property acquired by eminent domain may not be transferred or conveyed to a private person or for a use that is not a public use.

KP:rer