

**MINNESOTA PSC EXEMPTION STATUTE 117.189 SUMMARY**

STATUTE - Summary	Condemning Authority	
	Government (nonprofit)	PSCs (profit oriented/related)
MN 117.031 Owner's attorney fees	Damages over 40% from offer - automatic;  Damages 20% to 40% over offer - may be required;  Damages must be at least \$25,000	Exempt from statute
MN 117.036 Appraisal and negotiation requirement	Must have appraisal before starting eminent domain;  Must provide appraisal at time an offer is made;  Must negotiate in good faith;  Payment of appraisal fees \$1,500 to \$5,000;  Exchange appraisals five days before hearing.	Exempt;  Exempt;  Exempt;  Payment of appraisal fees \$500;  Exempt.
MN 117.186 Loss of Going Concern	Damages for a business that is destroyed;  Damages of up to three years effective gross income for loss of 51% driveway access.	Exempt from statute
MN 117.187 Minimum Compensation	If relocation required, compensation must be sufficient to purchase a comparable property in the community.	Exempt from statute
MN 117.188 Limitations	May not force property owner to accept, as partial compensation, any substitute or replacement property.	Exempt from statute
MN 117.52 Section (1a) Reestablishment Costs;  Section (4) Determination of relocation assistance by administrative law judge.	Payment of up to \$50,000 actual reestablishment cost for a non-residential move;  Initiation of, and payment for, an administrative law proceeding for determination of relocation assistance amount when owner objects to offer.	Exempt;  Exempt.

1- PAST ISSUES – The inability of Legislators to correct the eminent domain problem. Testimony has been allowed from lobbyists, employed by the ‘public service’ sectors, in committee meetings, but land owners interests have been completely overlooked.

2- The legislative branch of this State stepped up, in the ‘05-’06 session, and Made changes to the eminent domain law that required the condemning authority to follow rules as stated in State Statute 117. This statute seems workable while incorporating measures that allow property owners to receive compensation that is fair. However, a LIST OF EXEMPTIONS, CONTAINED IN SECTION 117.189 REMOVED ANY REQUIREMENT of the PUBLIC SERVICE CORPORATIONS TO ABIDE BY THE NEW STATUTES. (Please read the attached article written by John T. Schmick – “Legislature Trades One Abuse for Another” (Oct 2007). –Page 5 third paragraph states “Keep in mind that eminent domain is basically a situation where someone wants to take away the property you own and the law allows that entity to use a lawsuit against you in order to acquire it. If the goal of eminent domain law is make the property owner whole because of this forced sale condition, then as a society, we should seek better protection of property owner rights, not weaken that protection with exemptions to the Statute. Make no mistake, the cost to defend ones property can be a huge economic weapon in an eminent domain case that is a tremendous advantage to the condemning authority. – If any project can not afford the cost of being fair to property owners, then, I submit, that the project (is) too financially risky to be undertaken”.

This LIST OF EXEMPTIONS transfers the burden of proving the property value and the impact to that value, directly to the property owners – while removing any process of recovering the costs to defend those values. There is now no incentive for the PUBLIC SERVICE CORPORATIONS TO BE FAIR OR REASONABLE ANYTIME DURING THIS PROCESS.

3 – CONCLUSION – As landowners we do not understand the mentality that allows Public Service Corporations to acquire property, and easements, using a lower standard than what is imposed on cities, counties and State Government. We believe that anyone given the authority to use eminent domain should be required to follow at least the standards that provide for fair and just compensation as per our United States Constitution.

Statute 117.189

DOES NOT PERMIT THIS PROCESS TO BE FAIR OR JUST.

The Dehumanization of Tax Paying Citizens,  
by Public Service Corporations,  
in The Eminent Domain Process

We, the people of Minnesota elect representatives in both the senate and the house, to represent our interests, and to serve us –the tax payers. Many Minnesota citizens feel most legislators have sold citizens out to large businesses. They care only when they are up for re-election.

Free speech by citizens is a constitutional right, yet recently heralded as being radical or worse. It seems the government plays the game of “allow the citizenry to get involved so they can vent their frustration”, then we’ll do what we want anyway, after all the citizenry can’t say they weren’t heard! Since 2006 land owners have gone through a horrendous debacle with the MinnCan Crude Oil Pipeline, an LLC under Koch Industries Rosemount, MN. Representatives from MinnCan were sent out to coerce, harass, lie and intimidate land owners to sign biased easements months before a certificate of need was issued. A process that should have been done with realistic and honorable negotiations between involved parties turned out to be an extremely **Demeaning, Degrading, and Dehumanizing experience.** **This process was and still is beyond belief and completely flawed.**

If this process was not bad enough, landowners were subjected to low ball offers. Hundreds actually signed easements after being told if they want an attorney it would delay the process (construction or payment?) and offers would be less. Others, not signing the biased easement, were told by pipeline representatives they would take our property through Eminent Domain. The *quick take* is the first step for a condemning entity to receive title to property, **by law**, that the landowner did not want to sell and now has no rights in but is still obligated to pay real estate taxes on.

Prior to the installation of the MinnCan pipeline in ‘08, tree cutters were hired by the pipeline, to cut hundreds (perhaps thousands) of mature trees which were burned in January thru March ‘08 on private property during a weather inversion. The trees were wet and green and burned on the property the same day as the cutting. The tree cutters used some type of flammable spray to start the fires that burned with a yellow flame and a lot of black smoke. Some landowners were told by the tree cutters “that they were not to talk to the property owners- just cut and burn”.

The pipeline company stated in their **Environmental Assessment Supplement to the Pipeline Routing Permit Application (to the PUC) Table of Contents 1.0 page 8 (1.3) reads –“clearing and grading” –The very last sentence reads:**

**“Landowners will be given the option to take the timber which is cut down”. In addition: page 11 (1.3) under “Cleanup” “2<sup>nd</sup> paragraph reads-the disposal of timber, slash (brush and small branches), and rock will be done in accordance with the desires of the landowner. When landowners called the pipeline after the trees were cut and burned, we were told we had to notify the pipeline company if we wanted the trees, which is hard to do once the trees were gone. Landowners were not notified by anyone, much less from the pipeline company, when the trees would be cut on any owners properties.**

This process started in March of '06. Three years have passed, yet many landowners have not yet been fully compensated -- still waiting for payment. Some owners have not had a commission hearing. Some will eventually go to District Court to receive fair and just compensation, but at additional expense for the owner.

**“The Public Utilities Commission which issues the Certificates of Need should be renamed to “*Private Utilities Cash-house*” as they cater to Private Big Business.”**

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This brings us to the present CapX2020 project. The above pipeline scenario was allowed to happen because of the Eminent Domain “**exemptions**” that also apply to this project. In 2005-06 the legislature changed the Eminent Domain laws but gave “**exemptions**” to public service corporations. Two years ago this transmission line was being **touted for wind by CapX2020** because of the states mandate for renewable energy. Early on the lies started at public meetings. No one mentioned coal or other alternatives.

CapX2020 spearheaded by Xcel Energy is a consortium of 10+ other electric utility companies. Xcel Energy is the only corporation of this group allowed to present an application for a Certificate of Need to the PUC. The public was told that three different 345kV transmission lines are needed because of expanded electric needs in Minnesota, especially the Brookings line for wind.

CapX2020 having received a Certificate of Need also has the same right of **Eminent Domain** as the pipeline afore mentioned above. These three lines are just the beginning of other high voltage lines coming through Minnesota, affecting thousands of land owners now, and perhaps thousands more in the future. These “**exemptions**” must be eliminated to achieve fair and just compensation for these future property owners. The unfairness of the Eminent Domain laws was brought to the attention of the PUC in March '09 by land owners who were then ignored.

If the State of Minnesota will not allow crude oil, gas pipelines, or high voltage transmission lines to go through State property, why should citizens be forced to accept them?? If this is for the “common good” of Minnesota then the State should allow state property to be part of the mix.

Why should “PUBLIC SERVICE CORPORATIONS” insult, degrade, dehumanize and out right lie to owners on their property values without many receiving appraisals. These public service corporations set the price on a “take it or leave it basis”. If State property was available to be subjected to this abuse the State would be up in arms and laws would immediately be changed. Yet our own government (legislators and all government agencies presently involved in this process) turns a blind eye and ear to the plight of citizens whose property is being forcibly taken from them under the present Eminent Domain laws. These exemptions put in place by the legislature have become like leeches on the backs of the citizenry, with the PUC leading the way.

Citizens, and their rights, not only need to be heard, but validated, as we are not ignorant, nor are we pleased by the way we are treated. **What will it take to get a fair system so the property owners get as much respect, support and just compensation as the entity taking the land owners property?**

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### **Billy Graham's Prayer for Our Nation**

‘Heavenly Father, we come before you today to ask your forgiveness and to ask your direction and guidance. We know Your Word says, ‘Woe to those who call evil good,’ but that is exactly what we have done. We have lost our spiritual equilibrium and reversed our values. We have exploited the poor and called it the lottery. We have rewarded laziness and called it welfare. We have killed our unborn and called it choice. We have shot abortionists and called it justifiable. We have neglected to discipline our children and called it building self esteem. We have abused power and called it politics. We have coveted our neighbor's possessions and called it ambition. We have polluted the air with profanity and pornography and called it freedom of expression. We have ridiculed the time-honored values of our forefathers and called it enlightenment. Search us, Oh God, and know our hearts today; cleanse us from every sin and set us free. Amen!’

Legislature Trades One Abuse For Another  
By John T. Schmick  
October 14, 2007  
(A proposed article)

Just two short sentences with just three critical words, "...do not apply.". That is all it takes to create a hugely abusive eminent domain problem in Minnesota Law.

For years, property owners in Minnesota, and many other states, subject to an eminent domain taking of some, or all of their property, complained of unfair laws and abusive treatment on the part of condemning authorities. It was not until the Kelo Case in Connecticut, decided by the United States Supreme Court in June 2005, that various state legislatures woke up and started to respond to the voices of their citizens. In Kelo, the court decided that increasing the tax base was a permitted public purpose and proper use of eminent domain authority. Thus, taking property from one private citizen and giving it to another private citizen for redevelopment was a permitted use of that authority. However, the court also established that each state's legislative body could set their own limitations and rules on the use of eminent domain.

The Minnesota Legislative Session of 2006 responded by enacting changes to Minnesota's eminent domain laws that included several positive steps in the direction of trying to bring fairness and protections to property owners. Not only did they set rules on the use of eminent domain for redevelopment activity, they addressed the process that up to that point was abusive and created a significant advantage for the condemning authority. In practice, Minnesota eminent domain laws, prior to 2006, created a huge economic burden on any property owner who refused to accept official offers of compensation. Prior to 2003, condemning authorities only had to reimburse a property owner \$500 for appraisal services. That was changed to \$1,500 in 2003. There was never any reimbursement for any other costs including attorneys, other experts, or business losses.

Many people that work in, or with, the real estate industry regard the 2006 changes in Minnesota's eminent domain laws as the first significant changes to address the process. As it existed, the eminent domain process provided little to no opportunity, or right, to recover the cost of defending one's property from a taking. The changes in 2006 addressed the rules used in the process in the direction of providing some fairness for property owners. However, as 2007 progresses and the full impact of the changes created by the 2006 eminent domain law play out in real cases, we come to the startling realization that reality, as reflected by Minnesota Statute 117.189, is substantially different than first believed. We find that the legislature traded one set of abuses for another set of abuses.

Minnesota statute 117.189 is officially titled Public Service Corporation Exceptions. A public service corporation (PSC) has a specific definition in the law, but from a layman's viewpoint we are generally referring to utility, communication or pipeline entities that have the right to condemn private property to construct their facilities. In general, these are power lines, pipelines and cable/communication lines placed on a property by way of condemning an easement over that property. What MN Statute 117.189 does is roll back time and create greater protections for PSCs from their own actions and responsibilities than are provided to state and local governments in the eminent domain process. While the legislature created protection from abusive government actions, they created new opportunity for abuse by PSCs. Specific changes in the 2006 Minnesota law include the following:

- MN Statute 117.031 provides for payment of a property owner's attorney fees if the final judgment on damages is more than 40% greater than the last written offer by the condemning authority. When final judgements are between 20% and 40%, the court may award these fees at its discretion. No fees are awarded if the final judgement is less than 20% from the last written offer. However, damages must exceed \$25,000 before attorneys' fees can be awarded. MN Statute 117.189 exempts PSCs from any risk of paying attorney fees regardless of the difference between the final judgment and the last written offer.
- MN Statute 117.036 requires the condemning authority obtain at least one appraisal before commencing eminent domain proceedings and to provide that appraisal to the property owner at the time an offer is made for damages. An owner can request copies of all appraisals of the property obtained by the condemning authority as well. In addition, this statute provides for payment of appraisal fees to owners at the rate of \$1,500 for one and two family residential properties plus minimum damage acquisitions defined as \$10,000 in damage or less. For all other property types, the appraisal reimbursement fee is \$5,000. Finally, this statute requires the condemning authority negotiate in good faith. However, MN Statute 117.189 exempts PSCs not only from the appraisal requirement prior to starting eminent domain proceedings, but also from providing an appraisal as the basis of its offer and from negotiating in good faith. Essentially, a PSC can just make up any number it wants to start negotiations.
- MN Statute 117.036 also stipulates that both the condemning authority and the property owner must provide copies of their appraisals to the opposing side at least five days before a commission hearing. If the appraisal is not provided, the appraiser may not testify at the hearing. MN Statute 117.189, on the other hand, exempts PSCs from this appraisal exchange requirement but does not exempt the property owner. Imagine not having to disclose any basis for your offer and having a five day advance look at the owner's valuation case.

- MN Statute 117.186 provides for compensation for loss of going concern value if a business is destroyed in the eminent domain process. It also provides for up to three years of gross income (revenues minus cost of goods sold) for damages to a business if 51% of its driveway access is lost/taken. Under MN Statute 117.189, PSCs are exempt from paying the property owner for a business that is destroyed or damaged in an eminent domain proceeding.
- MN Statute 117.187 provides that when an owner must relocate as a result of the eminent domain project, the minimum compensation must be sufficient for the owner to purchase a comparable property in the community. Currently there is no guidance in either statute or case law as to what constitutes a comparable property or how to define the community. MN Statute 117.189 exempts PSCs from paying this minimum compensation when relocation of the owner is required.
- MN Statute 117.188 creates a limitation by preventing the condemning authority from forcing the property owner to accept, as partial compensation, any substitute property or replacement property or the return of any or all of the property taken. MN Statute 117.189 exempts PSCs from this limitation.
- MN Statute 117.52 [(1a) & (4)] pertains to Uniform Relocation Assistance. Section (1a) provides for reestablishment costs for a nonresidential move up to actual costs incurred of \$50,000. Section (4) provides that, if an owner objects to the relocation assistance amount, the condemning authority must initiate contested case proceedings with an administrative law judge making the final decision. The condemning authority must pay all costs of the proceeding including charges billed by the Office of Administrative Hearings. MN Statute 117.189 exempts PSCs from reestablishment costs for a business as well as from initiating the administrative hearing process and paying for it.



After all these exemptions, what is a Public Service Corporation actually responsible for under Minnesota law? Besides actual damages determined by a three person commission, the only obligation a PSC has is to cover a maximum appraisal fee of \$500 for all property types regardless of how far apart the award is from its written offer. Conceptually, a pipeline company, a power line company or some type of cable company with the power of eminent domain could offer \$0.10 on the dollar with no appraisal, not negotiate, but appear at the commission hearing with a new offer after a five-day advance knowledge of the owner's valuation case, pay the commissioner's award and never be held responsible for its actions or the economic harm inflicted on a property owner. Even if the property owner proves his valuation and 'wins' the case, he still loses economically because his cost for attorneys, appraisers and other experts comes out of the award. In some cases, the net award after paying his cost of defense can turn out to be no better, or only marginally better, than the original offer. As with any situation, there will be some PSCs that operate on a higher ethical standard than implied by these exemptions while other PSCs will take every advantage these exemptions offer.

To be fair to the 2006 Minnesota legislature, its focus was on the Kelo Case and an attempt to prevent abuses by government in the eminent domain process. Somewhere in the process of protecting owners from government actions, the legislators lost sight of the hugely abusive situation created by exempting PSCs from those very same actions. What we have now is a system whereby pipeline companies, power line companies and cable/communication companies enjoy far greater protection from the consequences of their actions than every municipal, county and state entity currently has in Minnesota.

This exemption for PSCs is also contradictory to the Landowner's Bill of Rights found in MN Statute 84.0274 which governs land acquisitions for the Minnesota Department of Natural Resources. The stated intent of the Landowner's Bill of Rights is to "...clarify the responsibility of the state.....and to provide additional protections to landowners in their dealings with the state." Within this Bill of Rights, the state is specifically instructed to "...refrain from discussing price with the landowner before an appraisal has been made." This statute grants the owner the protection/right that before an offer is made, the state will obtain an appraisal and inform the owner of the value determined by that appraisal. This is just common sense that an offer for damages would be based on market value considerations. However, under current Minnesota law, a PSC does not have to abide by any of the landowner protections included in the Bill of Rights. Today, it is common practice for some PSCs in Minnesota to make offers before Certificates of Need are approved, Routing Permits granted and before appraisals have been obtained. In a recent pipeline eminent domain case, a court had to order the PSC to get appraisals before hearings on damages would be commenced. How ironic that an owner has more protections if the state (nonprofit) wants their property for a park than if a PSC (profit oriented) wants to run a high voltage power line or high pressure pipeline through their front yard.

During the debate in the Legislature over these changes, the most common argument for exempting PSCs from full compliance with all eminent domain statutes is that they sometimes have very small takings. In cases where only a few square feet of land area are taken, the damages may amount to no more than a few hundred dollars. PSCs don't think it is fair to pay a \$1,500 appraisal fee to the property owner when damages are only a few hundred dollars. In actual practice, many condemning authorities demanded an appraisal report from property owners in order to get that appraisal reimbursement. That was true even when the appraisal reimbursement fee was \$500 prior to the 2003 legislative changes.

But what about the majority of their cases where damages are in the thousands, tens of thousands or even hundreds of thousands of dollars? In these situations, the cost to a land owner for an appraisal can exceed \$10,000 and a tenant or business may be forced to move. Even under the new law, a property owner generally does not receive full reimbursement of the cost to defend his property from offers he believes are inadequate. The cost of hiring legal representation, appraisers and other experts to defend a property owner from a forced sale of their property can create an economic burden on the owner that is never fully recaptured. In some cases, this economic burden is actually a significant barrier to defending an owner's property. Without sufficient economic resources, some property owners were left with no choice but to settle their cases at prices they believed to be unreasonable.

Keep in mind that eminent domain is basically a situation where someone wants to take away the property you own and the law allows that entity to use a lawsuit against you in order to acquire it. If the goal of an eminent domain law is to make the property owner whole because of this forced sale condition, then, as a society, we should seek better protection of property owner rights, not weaken that protection with exceptions to the statute. Make no mistake, the cost to defend one's property can be a huge economic weapon in an eminent domain case that is a tremendous advantage to the condemning authority. What this really comes down to is a failure to recognize the full cost of these projects by pushing a disproportionate share of the cost onto the property owners whose land is being taken. Acquisition of land rights is often only a small part of the overall project cost. If any project cannot afford the cost of being fair to property owners, then, I submit, that the project is too financially risky to be undertaken.

State, County and local units of government are clearly nonprofit oriented organizations. Pipelines, power lines and cable/communication lines are generally related, either directly or indirectly to an organization that is profit oriented, even if regulated. By what measure or reasoning can the exemptions under MN Statute 117.189 be justified for a PSC when state and local government itself does not have those same exemptions? How is eminent domain for expansion of a road any different from eminent domain for a new pipeline easement next to a road? The 2006 legislative changes to Chapter 117 of Minnesota Statutes for eminent domain usage were made for reasons which were illustrated for the entire nation when the US Supreme Court announced its ruling in the Kelo case. Not only did the 2006 Minnesota legislature exempt PSCs from those rules, legislators actually rolled back time by providing PSCs with a pre-2003 appraisal reimbursement fee structure. To exempt PSCs from nearly all responsibility for some types of damages and costs suggests a special treatment for big business at the cost of individual property rights.

With pipeline projects and power line projects in active planning stages across this state and many others, it is time to rescind these types of overly broad eminent domain exemptions for PSCs. In Minnesota, property owners deserve better than to now suffer the same abuses of property rights from PSCs as they previously did from government. To the extent that similar exemptions exist in other states, the legislatures in those states need to act to protect property owners. While Public Service Corporations need, and should have, the power of eminent domain, they should not have blanket immunity from their use of that power. Extreme valuation positions on either side of a negotiation are not helpful to reaching a settlement. But neither is handing a huge economic club to one side and creating economic barriers for the other side. Providing full cost of defense to property owners in a forced sale situation should be part of the total project cost. Property owners will still need to prove their valuation case but should not be denied that opportunity because of cost. In Minnesota, the legislature still does not understand the abusive impact of their actions.

While eminent domain laws vary from state to state, right-of-way professionals need to be fully informed of the impact of those laws on both the condemning authority and property owners. Where both sides have equal power in the eminent domain process, fair negotiations can thrive. Where one side has an advantage over the other in the process, litigation thrives. As a profession, regardless of which side one represents, we have a responsibility to encourage a fair and balanced process consistent with our professional ethics for providing unbiased valuation services. To that extent, participation in the legislative process to achieve a balanced process should be part of every Right of Way Chapter and individual member's education and goals.