Troy Coons
Northwest Landowners Association
House Energy and Natural Resources Committee
SB 2065 Subcommittee
March 18, 2021

Re: Amendments to Senate Bill 2065

Chairman George Keiser and Members of the Subcommittee:

We are submitting some redlined edits to SB 2065 with our proposed amendments. I will walk through each change to explain, and to explain the underlying concern it addresses as well.

Executive agencies cannot create wholesale exceptions to laws passed by the Legislative Assembly

On page two, in the new section 38-25-02, subsection 8 states that the Industrial Commission has the power "After notice and hearing, to grant exceptions to this chapter's requirements and implementing rules for good cause." We understand from Mr. Helms and his prior testimony to this subcommittee that this language arose in the context of the 2009 carbon sequestration laws, and a concern over changing federal standards. NWLA's primary concern is that the requirements to equitably compensate landowners, and to obtain a certain percentage of consenting owners prior to amalgamation could simply be exceptions under this language. Additionally, and aside from our specific concerns, we do not believe that it is constitutional to allow an executive branch agency to create blanket exceptions to a statute passed by the legislative branch. This is essentially a wholesale delegation of the lawmaking power to the executive branch, and it is both concerning because it violates the bedrock principle of separation of powers at the core of constitutional law. The delegation of authority for exceptions to administrative rules may run into the same problems, but our amendment is only to exclude exceptions to the statute because issues with delegation of power under rulemaking are likely premature at this time.

Consent threshold at 65%

The next addition we have made is to the new NDCC § 38-25-05(6), NDCC § 38-25-06(5), and NDCC § 38-25-07(6), changing 55% to 65%. The carbon sequestration laws passed in 2009 require 60% (Mr. Helms corrected us that it is 60%, not 65%). We believe that 60%, and even 65% is insufficient. We are attempting to compromise at 65%. In our view, the authority to "amalgamate" as it is referred to in this law is questionable. Although there is a long history of authority under the police power to use pooling and spacing of minerals in certain situations, the justifications for pooling and unitizing mineral interests simply do not hold true for pore space. The reason for pooling and spacing is to ensure that we are not drilling unnecessary wells, and to ensure orderly development. The law developed this way because the former "rule of capture' meant that mineral owners with minerals in the same pool had only one remedy for drainage – to drill more wells. Because of the excessive number of wells that were being drilled in order to drain the pools of oil before your neighbor did, the states developed

conservation laws that allowed for forced-pooling and unitization. The courts have said that the state is at the limits of its police powers when it exercises this authority. We do not believe that the justification holds up for amalgamation of surface interests for gas storage, because it is a taking of that interest, whereas if you own minerals, even when you are force-pooled, you are guaranteed to receive your equitable share of the oil. In the interest of compromising, we are proposing to raise the percentage required to amalgamate the surface estate interests.

Minor clarification

In new section 38-25-08, we simply added language to clarify that the amalgamation authority is still subject to the applicant obtaining the minimum consent percentage. We assume this was the intent, so this change is only intended for clarification.

Liability

While we do not believe that a nonconsenting owner should have any legal liability for the operation of such a storage facility on their property, we would like to make this clear.

Compensation determined by neutral third party

Although the statute does require that pore space owners be paid equitable compensation, it does not explain how a pore space owner forces an operator to pay compensation if the pore space owner and operator cannot come to a voluntary agreement. At the last subcommittee meeting, Mr. Helms indicated that he does not believe an action in district court is workable because it would disrupt the permitting process and prevent any project from happening. We respectfully disagree. Gas storage projects are already occurring, and some are occurring in Wyoming under the jurisdiction of the Federal Energy Regulatory Commission. FERC allows for condemnation of interests, and whether it is gas storage or an interstate gas pipeline, the requirement for operators to pay compensation and to use the courts for condemnation of interests necessary for those projects has not stopped them. Indeed, many of the interstate gas pipelines and gas storage facilities have used eminent domain to some extent. Far from preventing these projects, the federal courts have generally allowed the projects to take immediate possession of land when necessary, even before the eminent domain proceeding has run its course.

It appears that the goal is to require landowners to seek compensation solely from the Industrial Commission if they cannot come to a voluntary agreement for use of their pore space. We believe a jury of North Dakotans are in a better position to make that determination for us. In his testimony in support of SB 2344 in 2019, Mr. Helms said the following: "… you can see this project stores and reproduces the gas at $2.96, which means it can't endure any additional burden from having to compensate for pore space being temporarily used for the storage of natural gas. The economics aren't there."[1] The Industrial Commission testified in support of SB 2344, which took away any rights to compensation for pore space. The Commission also took the position that "the economics aren't there" to compensate pore space owners for use of their property for gas storage. These comments from the Commission, the

[1] https://www.legis.nd.gov/files/resource/66-2019/library/sb2344.pdf.

very agency proposing to determine compensation for landowners, are deeply concerning. Landowners should not be forced to look only to this same agency for compensation.

We are not asking for anything more than the constitution provides, though. We would like access to the courts if we disagree with the determination made by the Commission on the amount of equitable compensation we are owed. If we disagree, our proposed amendment would allow us to file an appeal to the district court, where the court would hold a jury trial and we could attempt to make our case to a jury of North Dakotans. The important difference between our amendment, and the existing right to appeal any decision of the Commission, is that the standard appeal from the Commission requires the district court to sustain the Commission's decision in almost all cases.

That language for standard appeals from the Industrial Commission states that "Orders of the commission must be sustained by the district court if the commission has regularly pursued its authority and its finds and conclusions are sustained by the law and by substantial and credible evidence."[2] The Supreme Court of ND has said that this only requires a Commission decision to have "substantial evidence" even if there might be more evidence on the other side.[3]

In other words, it's not a fair playing field if we disagree with the Commission. This standard makes sense if you are talking about deciding complicated issues in oil and gas regulation. It does not make sense when you are talking about deciding fair compensation for the use of *our property*. We are simply asking that we be able to go ask a jury to decide the issue if we do disagree. If the Commission awards compensation that is truly equitable, then perhaps these appeals will not be used very often. If the Commission gets it wrong, though, we should be able to make our case on level ground, and to a group of North Dakota citizens.

We have modeled our proposal on an existing law rather than recreating the wheel. In Minnesota, eminent domain proceedings allow for the appointment of a panel to decide compensation, and if the landowner disagrees, he can appeal to the district court and present his evidence to a jury. I have attached the Minnesota statutes, and a copy of North Dakota Century Code section 38-08-14, which is the section that provides for the standard appeal from Commission orders. Our proposal combines the basic and relevant provisions of these two laws. We have also used an appeal procedure rather than a separate legal action to address concerns about a determination of compensation holding up a permit. Additionally, we have stated plainly in our proposal that the permit decision stands regardless of an appeal regarding compensation.

We have truly tried to work toward a resolution with this bill. We are happy to see recognition of the right to compensation for owners of pore space, but as currently written Senate Bill 2065 does not provide adequate protections to ensure our property is not taken without equitable compensation. There are many other ways in which we would like to see this legislation

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[2] N.D.C.C. § 38-08-14.

[3] "Substantial evidence," for purposes of the weight of evidence test applicable to findings of Industrial Commission, is such relevant evidence as reasonable mind might accept as adequate to support conclusion; it is something less than greater weight of evidence and less than preponderance of evidence. NDCC 38-08-14, subd. 4. *Hanson v. Industrial Com'n of North Dakota*, 1991, 466 N.W.2d 587.

improved, but in the interest of compromise and reaching resolution, we are limiting our proposed amendments to those we find most critical. We request that you adopt these amendments in order to help find a balance.

Thank you for taking the time to consider our comments.

Sincerely,

Troy Coons, Chairman
Northwest Landowners Association

Prepared by the Legislative Council staff for
Senator Patten
January 27, 2021

PROPOSED AMENDMENTS TO SENATE BILL NO. 2065

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact section 15-05-09.1 and chapter 38-25 of the North Dakota Century Code, relating to the authority of the board of university of school lands to lease lands under its control for the underground storage of oil or gas and the jurisdiction of the industrial commission to regulate the permitting and amalgamation of the underground storage of oil or gas.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 15-05-09.1 of the North Dakota Century Code is created and enacted as follows:

15-05-09.1. Authorization to lease for the underground storage of oil or

The board of university and school lands may lease any lands under the board's control for the underground storage of oil, natural gas, including hydrogen, and any other liquid hydrocarbons and may establish any rules and regulations necessary concerning the leasing of such rights.

SECTION 2. Chapter 38-25 of the North Dakota Century Code is created and enacted as follows:

38-25-01. Definitions.

As used in this section:

.1... "Commission" mean the industrial commission.

2. "Gas" includes all natural gas, including hydrogen, and all other fluid hydrocarbons not defined as oil.

3. "Geological storage" means the underground storage of oil or gas in a storage reservoir or salt cavern.

4. "Oil" includes crude petroleum oil and other hydrocarbons regardless of gravity which are produced at the wellhead in liquid form and the liquid hydrocarbons known as distillate or condensate recovered or extracted from gas, other than gas produced in association with oil and commonly known as casinghead gas.

5. "Permit" means a permit issued by the commission allowing a person to operate an underground storage facility.

6. "Pore space" has the same meaning as in section 47-31-02.

7. "Reservoir" means a subsurface sedimentary stratum, formation, aquifer, or void, whether natural or artificially created, including oil and gas reservoirs and saline formations suitable for or capable of being made suitable for injecting, storing, and withdrawing oil or gas. The term does not include salt caverns.

8. "Salt cavern" means a natural occurring cavity contained within a salt formation or a cavity created in a salt formation by solution mining, suitable for injecting, storing, and withdrawing oil or gas.

9. "Solution mining" means the process of injecting fluid into a well to dissolve rock salt or other readily soluble rock to create a salt cavern for underground storage of oil or gas.

10. "Storage facility" means the reservoir, salt cavern, underground equipment, and surface facilities and equipment used or proposed to be used in an underground storage operation. The term does not include a pipeline used to transport oil or gas to the storage facility.

11. "Storage operator" means a person holding or applying for a permit.

38-25-02. Commission authority.

The commission has authority:

1. Over all persons and property necessary to administer and enforce this chapter.

2. To regulate activities relating to an underground storage facility, including construction, solution mining to create salt caverns, operation, and closure.

3. To enter an underground storage facility at a reasonable time and manner to inspect equipment and facilities, to observe, monitor, and investigate operations, and to inspect records required to be maintained at the facility.

4. To require storage operators provide financial assurance, including bonds, to ensure money is available to fulfill the storage operator's duties.

5. To exercise continuing jurisdiction over storage operators and storage facilities, including the authority to amend or revoke a permit after notice and hearing.

6. After notice and hearing, to dissolve or change the boundaries of any commission established oil or gas field or unit within or near a storage reservoir's or salt cavern's boundaries.

7. After notice and hearing, to adopt reasonable rules and issue reasonable orders to implement the policies of **this** chapter.

8. After notice and hearing, to grant exceptions to ~~this chapter's requirements and~~ implementing rules for good cause.

38-25-03. Permit required - Permit transfer.

Geologic storage is allowed if permitted by the commission. A permit may be transferred if the commission consents.

38-25-04. Permit hearing - Hearing notice.

1. The commission shall hold a public hearing before issuing any storage permit.

2. Notice of the hearing must be published for two consecutive weeks in the official newspaper of the county or counties where the storage reservoir or salt cavern is proposed to be located and in any other newspaper the commission requires. Publication deadlines must comply with commission requirements.

3. Notice of hearing must be given to each surface owner of land overlying the storage reservoir or salt cavern and within one-half mile [0.80 kilometer] of the reservoir's or salt cavern's boundaries.

4. If the proposed storage facility contemplates storage of oil or gas in an oil and gas reservoir, notice of the hearing also must be given to each mineral lessee, mineral owner, and pore space owner within the storage reservoir and within one-half mile [0.80 kilometer] of the storage reservoir's boundaries.

5. If the proposed storage facility contemplates storage of oil or gas in a salt cavern, notice of the hearing must be given to each salt mineral lessee, salt mineral owner, and pore space owner within the salt cavern outer boundaries and within one-half mile [0.80 kilometer] of the outer boundaries of the salt cavern, or as otherwise may be required by the commission.

6. If the storage facility contemplates storage of oil or gas in a saline formation or aquifer, notice of hearing must be given to each pore space owner within the storage reservoir and within one-half mile [0.80 kilometer] of the storage reservoir's boundaries.

7. Hearing notices required by this section must comply with the deadlines set by the commission and must contain the information the commission requires.

38-25-05. Permit requirements - Storage in oil and gas reservoir.

Before issuing a permit for storage in an oil and gas reservoir, the commission shall find:

1. The storage operator has or will obtain the consent by lease, purchase, or other agreement from all surface owners where surface disturbance activities are necessary and surface facilities will be located.

2. The storage operator has complied with all requirements set by the commission.

3. The storage facility is suitable and feasible for the injection, storage, and withdrawal of oil or gas.

4. The storage operator has made a good-faith effort to get the consent of all persons that own the storage reservoir's pore space.

5. The storage operator has made a good-faith effort to obtain the consent of all persons that own oil and gas minerals and oil and gas leases.

6. The storage operator has obtained the consent of persons that own at least ~~fifty~~sixty-five percent of the storage reservoir's pore space.

7. The storage operator has obtained the consent of persons that own at least fifty-five percent of the storage reservoir's oil and gas minerals and oil and gas leases.

8. Whether the storage reservoir contains any commercially valuable oil, gas, or other minerals and, if it does, a permit may be issued only if the commission is satisfied the interests of the mineral owners or mineral lessees will not be affected adversely or have been addressed in an arrangement entered by the mineral owners or mineral lessees and the storage operator.

9. The proposed storage facility will not affect adversely surface waters or formations containing fresh water.

10. The injected oil or gas will not escape from the storage reservoir.

11. The storage facility will not endanger health or unduly endanger the environment.

12. The storage facility is in the public interest.

13. The horizontal and vertical boundaries of the storage reservoir are defined to include any necessary or reasonable buffer zone for the purpose of ensuring the safe operation of the storage facility and to protect the storage facility against pollution, invasion, and escape or migration of oil or gas therefrom.

14. The storage operator will establish monitoring facilities and protocols to assess the location and migration of oil and gas, if any, injected for storage and to ensure compliance with all permit, statutory, and administrative requirements.

15. All nonconsenting owners are or will be compensated equitably.

38-25-06. Permit requirements - Storage in saline reservoir or aquifer.

Before issuing a permit for storage in a saline reservoir or aquifer, the commission shall find:

1. The storage operator has or will obtain the consent by lease, purchase, or other agreement from all surface owners where surface disturbance activities are necessary and surface facilities will be located.

2. The storage operator has complied with all requirements set by the commission.

3. The storage facility is suitable and feasible for the injection, storage, and withdrawal of oil or gas.

4. The storage operator has made a good-faith effort to obtain the consent of all persons that own the storage reservoir's pore space.

5. The storage operator has obtained the consent of persons that own at least ~~fifty~~sixty-five percent of the storage reservoir's pore space.

6. The proposed storage facility will not affect adversely surface waters or formations containing fresh water.

7. The injected oil or gas will not escape from the storage reservoir.

8. The storage facility will not endanger health or unduly endanger the environment.

9. The storage facility is in the public interest.

The horizontal and vertical boundaries of the storage reservoir are defined to include any necessary or reasonable buffer zone for the purpose of ensuring the safe operation of the storage facility and to protect the storage facility against pollution, invasion, and escape or migration of oil or gas therefrom.

11. The storage operator will establish monitoring facilities and protocols to assess the location and migration of oil and gas, if any, injected for storage and to ensure compliance with all permit, statutory, and administrative requirements.

12. All nonconsenting pore space owners are or will be compensated equitably.

38-25-07. Permit requirements - Storage in salt cavern.

Before issuing a permit for storage in a salt cavern, the commission shall find:

1. The storage operator has or will obtain the consent by lease, purchase, or other agreement from all surface owners where surface disturbance activities are necessary and surface facilities will be located.

2. The storage operator has complied with all requirements set by the commission, including all necessary permits to conduct solution mining, if applicable.

3. The storage facility is suitable and feasible for the injection, storage, and withdrawal of oil or gas.

4. The storage operator has made a good-faith effort to obtain the consent of all persons that own the salt cavern's pore space.

5. The storage operator has made a good-faith effort to obtain the consent of all persons that own the salt cavern's salt minerals and salt leases.

6. The storage operator has obtained the consent of persons that own at least ~~fifty~~sixty-five percent of the salt cavern's pore space.

7. The storage operator has obtained the consent of persons that own at least fifty-five percent of the salt cavern's salt minerals and salt leases.

8. The proposed storage facility will not affect adversely surface waters or formations containing fresh water.

9. The injected oil or gas will not escape from the salt cavern.

10. The storage facility will not endanger health or unduly endanger the environment.

11. The storage facility is in the public interest.

12. The horizontal and vertical boundaries of the salt cavern are defined to include a buffer zone from the outer walls of the cavern for the purpose of ensuring the safe operation of the storage facility and to protect the storage facility against pollution, invasion, and escape or migration of gas therefrom.

13. The storage operator will establish monitoring facilities and protocols to assess the location and migration of oil and gas, if any, injected for storage and to ensure compliance with all permit, statutory, and administrative requirements.

14. That all nonconsenting owners are or will be equitably compensated.

38-25-08. Amalgamating property interests.

If a storage operator does not obtain the consent of all persons owning a pore space and of mineral interest owners when required by this chapter, the commission may require the interest owned by the nonconsenting owners be included in an approved storage facility and subject to geologic storage if the minimum percentage of consent is obtained as specified in this chapter. No nonconsenting owner of pore space or surface estate may be held liable for money damages for personal or property damage proximately caused by the operation of the storage facility.

38-25-09. Ownership of oil and gas.

All oil or gas previously reduced to possession and subsequently injected into underground storage facilities must be deemed the property of the storage operator subject to the obligation to pay royalties as set forth in section 38-25-10.

38-25-10. Injection of produced gas - When royalties owed.

1. Unless otherwise expressly agreed by the storage operator, mineral owners, and lease owners, royalties on gas produced but not sold and which is injected into a storage facility instead of flaring or for lack of market, are not due on the produced and stored gas until gas volumes actually are withdrawn from the storage facility, sold, and proceeds received from the sale.

2. Prior to gas being withdrawn and sold from a storage facility under this section, the storage operator, after notice and hearing, shall obtain approval from the commission evidencing a reasonable and equitable method of allocation of the stored gas sale proceeds to the rightful mineral, royalty, and leasehold owners of the gas injected into storage. The commission may adopt such rules and orders as necessary to implement the purposes of this section."

Renumber accordingly

38-25-11. Appeal for determination of equitable compensation.

1. Any nonconsenting surface or pore space owner may appeal any decision of the Commission on the issue of the amount of equitable compensation owed to that owner for use of the owner's surface or pore space. The appeal may be taken to the district court for the county in which the property affected by the order is located or if the property is located in or underlies more than one county, to the district court for any county in which the property is located.
2. The owner must file a notice of appeal with the district court within sixty (60) days of notice of the Commission's decision. The notice of appeal will specify the decision or compensation determination appealed from and describe the real property valued. The notice of appeal must also be served on the storage operator via certified U.S. Mail.
3. In all such proceedings under this section where an appeal is taken to the district court from the decision or award of the Commission on the issue of the amount of equitable compensation owed to the owner, the owner will be entitled to a jury trial. Such appeal may be noticed for trial and tried as in the case of a civil action and the court may direct that issues be framed, and require other parties to be joined and to plead therein when necessary for the proper determination of the questions involved. The owners shall go forward with the evidence and have the burden of proof as in any other civil action, with the right to open and close. The court or jury trying the case shall reassess the damages de novo and apportion the same as the evidence and justice may require.
4. The court may, in its discretion, after a verdict has been rendered on the trial of an appeal, allow as taxable costs reasonable expert witness and appraisal fees of the owner, together with the owner's reasonable costs and disbursements. No expert witness fees, costs or disbursements shall be awarded to the storage operator or Commission regardless of who is the prevailing party.
5. The remedy provided in this section is cumulative and does not replace the right to appeal provided in N.D.C.C. 38-08-14. Appeals under this section are limited to the issue of the amount of equitable compensation owed to any nonconsenting surface or pore space owner whose property is being amalgamated under this chapter. The Commission's decision will remain in full and force and effect when an appeal is taken under this section.

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Minnesota Statutes Annotated
Eminent Domain; Local Depositories and Investments (Ch. 117-119)
Chapter 117. Eminent Domain (Refs & Annos)

M.S.A. § 117.145

117.145. Appeal: deadline, notice, service, contents; by other parties

Currentness

At any time within 40 days from the date that the report has been filed, any party to the proceedings may appeal to the district court from any award of damages embraced in the report, or from any omission to award damages, by: (1) filing with the court administrator a notice of such appeal, and (2) serving by mail a copy of such notice on all respondents and all other parties to the proceedings having an interest in any parcel described in the appeal who are shown in the petitioner's affidavit of mailing, required by section 117.115, subdivision 2, as having been mailed a notice of the report of the commissioners.

If any notice of appeal is filed, any other party may appeal within 50 days from the date that the report was filed by: (1) filing with the court administrator a notice of the appeal; and (2) serving the notice of appeal by mail, as provided in this section. Service by mail is deemed effective upon deposit of the notice in the United States mail, by first class mail, with postage prepaid, and addressed to each person served at the address shown in the petitioner's affidavit of mailing required by section 117.115, subdivision 2. Proof of service by mail of a notice of appeal shall be filed with the court administrator promptly following the mailing of any notice of appeal. The notice of appeal shall specify the particular award or failure to award appealed from, the nature and amount of the claim, the land to which it relates, and grounds of the appeal, and if applicable, the notice required in section 117.086.

Credits

Laws 1971, c. 595, § 18. Amended by Laws 1986, 1st Sp., c. 3, art. 1, § 82; Laws 1995, c. 106, § 3.

M. S. A. § 117.145, MN ST § 117.145

Current with legislation effective through Mar. 3, 2021 from the 2021 Regular Session. Some statute sections may be more current, see credits for details. The statutes are subject to change as determined by the Minnesota Revisor of Statutes. (These changes will be incorporated later this year.)

End of Document

Minnesota Statutes Annotated
Eminent Domain; Local Depositories and Investments (Ch. 117-119)
Chapter 117. Eminent Domain (Refs & Annos)

M.S.A. § 117.155

117.155. Payments; partial payment pending appeal

Currentness

Except as otherwise provided herein payment of damages awarded may be made or tendered at any time after the filing of the report; and the duty of the petitioner to pay the amount of any award or final judgment upon appeal shall, for all purposes, be held and construed to be full and just compensation to the respective owners or the persons interested in the lands. If either the petitioner or any respondent appeals from an award, the respondent or respondents, if there is more than one, except encumbrancers having an interest in the award which has been appealed, may demand of the petitioner a partial payment of the award pending the final determination thereof, and it shall be the duty of the petitioner to comply with such demand and to promptly pay the amount demanded but not in excess of an amount equal to three-fourths of the award of damages for the parcel which has been appealed, less any payments made by petitioner pursuant to section 117.042; provided, however, that the petitioner may by motion after due notice to all interested parties request, and the court may order, reduction in the amount of the partial payment for cause shown. If an appeal is taken from an award the petitioner may, but it cannot be compelled to, pay the entire amount of the award pending the final determination thereof. If any respondent or respondents having an interest in the award refuses to accept such payment the petitioner may pay the amount thereof to the court administrator of district court to be paid out under direction of the court. A partial or full payment as herein provided shall not draw interest from the condemner from the date of payment or deposit, and upon final determination of any appeal the total award of damages shall be reduced by the amount of the partial or full payment. If any partial or full payment exceeds the amount of the award of compensation as finally determined, upon petitioner's motion, final judgment must be entered in the condemnation action in favor of the petitioner in the amount of the balance owed to the petitioner and is recoverable within the original condemnation action.

Credits

Laws 1971, c. 595, § 19. Amended by Laws 1980, c. 607, art. 19, § 2; Laws 1986, 1st Sp., c. 3, art. 1, § 82; Laws 1997, c. 231, art. 16, § 3.

M. S. A. § 117.155, MN ST § 117.155

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Minnesota Statutes Annotated
Eminent Domain; Local Depositories and Investments (Ch. 117-119)
Chapter 117. Eminent Domain (Refs & Annos)

M.S.A. § 117.165

117.165. Jury trials; disclosure

Currentness

Subdivision 1. Appeal. In all eminent domain proceedings where an appeal is taken to the district court from the award of commissioners, the owner or the petitioner shall be entitled to a jury trial.

Subd. 2. Disclosure of witnesses, appraisals of damages. In the event of an appeal from the award of commissioners, and upon written demand by a party, the other party shall disclose under oath in writing within 15 days the appraisal witnesses the disclosing party proposes to call on its behalf at trial, and the amount of their appraisals of the damages. The demand shall be deemed continuing.

Subd. 3. Failure to disclose. A party shall not be permitted at the trial, except for just cause shown, to use any expert witness on the matter of damages whose name, address and appraisal was not disclosed to the other party following a written demand.

Credits
Laws 1971, c. 595, § 20.

M. S. A. § 117.165, MN ST § 117.165
Current with legislation effective through Mar. 3, 2021 from the 2021 Regular Session. Some statute sections may be more current, see credits for details. The statutes are subject to change as determined by the Minnesota Revisor of Statutes. (These changes will be incorporated later this year.)

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Minnesota Statutes Annotated
Eminent Domain; Local Depositories and Investments (Ch. 117-119)
Chapter 117. Eminent Domain (Refs & Annos)

M.S.A. § 117.175

117.175. Trial, burden of proof, costs

Currentness

Subdivision 1. Trial. Such appeal may be noticed for trial and tried except as herein otherwise provided as in the case of a civil action and the court may direct that issues be framed, and require other parties to be joined and to plead therein when necessary for the proper determination of the questions involved. The owners shall go forward with the evidence and have the burden of proof as in any other civil action, with the right to open and close. The court or jury trying the case shall reassess the damages de novo and apportion the same as the evidence and justice may require. Upon request of a party to such appeal, the jury or court shall show in the verdict or order the amount of the award of damages which is to reimburse the owner for the land taken and the amount of the award of damages, if any, which is to reimburse the owner for damages to the remainder tract not taken whether or not described in the petition. The amounts awarded to each person shall also be shown separately. A commissioner in a condemnation proceeding may be called by any party as a witness to testify as to the amount and the basis of the award of commissioners and may be examined and qualified as any other witness.

Subd. 2. Fees, costs, and disbursements. The court may, in its discretion, after a verdict has been rendered on the trial of an appeal, allow as taxable costs reasonable expert witness and appraisal fees of the owner, together with the owner's reasonable costs and disbursements. No expert witness fees, costs or disbursements shall be awarded to the petitioner regardless of who is the prevailing party.

Credits
Laws 1971, c. 595, § 21.

M. S. A. § 117.175, MN ST § 117.175
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