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SENATE FILE 2261  
BY REHBERG

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

A BILL FOR

1 An Act relating to condemnation of private property and allowing  
2 a deduction from taxable income of certain condemnation awards  
3 and providing a retroactive applicability date.  
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 2261 LOCAL GOVERNMENT

1 Section 1. NEW SECTION. 6A.22 PROCEEDINGS TO ENJOIN --  
2 COSTS.

3 The costs of any proceedings in which a landowner seeks to  
4 enjoin exercise of the power granted under this chapter shall  
5 be paid by the party seeking condemnation.

6 Sec. 2. Section 6B.21, Code Supplement 1999, is amended to  
7 read as follows:

8 6B.21 APPEALS -- HOW DOCKETED AND TRIED.

9 The appeal shall be docketed in the name of the person  
10 appealing and all other interested parties to the action shall  
11 be defendants. In the event the condemner and the condemnee  
12 appeal, the appeal shall be docketed in the name of the  
13 appellant which filed the application for condemnation and all  
14 other parties to the action shall be defendants. The appeal  
15 shall be tried as in an action by ordinary proceedings. The  
16 appraisement of damages by the compensation commission is  
17 admissible in the action, as are the proceedings of the  
18 compensation commission; the matters considered by the  
19 compensation commission; other comparable final condemnation  
20 awards or purchases under threat of condemnation; replacement  
21 cost; and the availability of replacement property.

22 Sec. 3. Section 6B.25, Code 1999, is amended to read as  
23 follows:

24 6B.25 RIGHT TO TAKE POSSESSION OF LANDS -- TITLE.

25 Upon the filing of the commissioners' report with the  
26 sheriff, the applicant may deposit with the sheriff the amount  
27 assessed in favor of a claimant, and the applicant, except as  
28 otherwise provided, may take possession of the land condemned  
29 and proceed with the improvement. An appeal from the  
30 assessment does not affect the right, except as otherwise  
31 provided. Upon appeal from the commissioners' award of  
32 damages, the district court may direct that the part of the  
33 amount of damages deposited with the sheriff, as it finds just  
34 and proper, be paid to the claimant. If upon trial of the  
35 appeal a lesser amount is awarded the difference between the

1 amount so awarded and the amount paid shall be repaid by the  
2 person to whom it was paid and upon failure to make the  
3 repayment the party shall have judgment entered against the  
4 person who received the excess payment. Title to the property  
5 or the interests in property passes to the applicant when  
6 damages have been finally determined and paid. Funds  
7 deposited with the sheriff shall be immediately available, and  
8 the amount deposited shall include interest from the date of  
9 the award, calculated at an annual rate equal to the coupon  
10 issue yield equivalent, as determined by the United States  
11 secretary of the treasury, of the average accepted auction  
12 price for the last auction of fifty-two-week United States  
13 treasury bills settled immediately before the date of the  
14 award. Any amount deposited with the sheriff and not paid to  
15 the claimant pursuant to court order pending resolution of the  
16 appeal shall be placed in an interest-bearing escrow account  
17 pending resolution of the appeal. Failure to place the  
18 deposit in an interest-bearing account shall not relieve the  
19 applicant from the responsibility to pay interest on the  
20 amount finally awarded from the date of the award.

21 Sec. 4. Section 6B.33, Code Supplement 1999, is amended to  
22 read as follows:

23 6B.33 COSTS AND ATTORNEY FEES.

24 The applicant shall pay all costs of the assessment made by  
25 the commissioners and reasonable attorney fees and costs  
26 incurred by the condemnee as determined by the commissioners,  
27 including costs of appraisals and expert witnesses, if the  
28 award of the commissioners exceeds one hundred ten percent of  
29 the final offer of the applicant prior to condemnation. The  
30 applicant shall file with the sheriff an affidavit setting  
31 forth the most recent offer made to the person whose property  
32 is sought to be condemned. Members of such commissions shall  
33 receive a per diem of fifty dollars and actual and necessary  
34 expenses incurred in the performance of their official duties.  
35 The applicant shall reimburse the county sheriff for the per

1 diem and expense amounts paid by the sheriff to the members.  
2 The applicant shall reimburse the owner for the expenses the  
3 owner incurred for recording fees, penalty costs for full or  
4 partial prepayment of any preexisting recorded mortgage  
5 entered into in good faith encumbering the property, and for  
6 similar expenses incidental to conveying the property to the  
7 applicant. The applicant shall also pay all costs occasioned  
8 by the appeal, including reasonable attorney fees to be taxed  
9 by the court and costs of appraisals and expert witnesses,  
10 unless on the trial thereof the same or a lesser amount of  
11 damages is awarded than was allowed by the tribunal from which  
12 the appeal was taken. The applicant shall also pay costs  
13 occasioned by the appeal if the award on appeal exceeds one  
14 hundred ten percent of the final offer of the applicant prior  
15 to condemnation.

16 Sec. 5. Section 6B.34, Code 1999, is amended to read as  
17 follows:

18 6B.34 REFUSAL TO PAY FINAL AWARD.

19 Should the applicant dismiss the proceedings at any time  
20 after filing the application, or should the applicant decline,  
21 at any time after an appeal is taken as provided in section  
22 6B.18, to take the property and pay the damages awarded, the  
23 applicant shall pay, in addition to the costs and damages  
24 actually suffered by the landowner, reasonable attorney fees  
25 to be taxed by the court. Should the applicant fail to take  
26 the property and pay the damages awarded within thirty days  
27 from the award by the commission, the proceedings shall be  
28 dismissed at the applicant's cost and the applicant shall pay,  
29 in addition to the costs and damages actually suffered by the  
30 landowner, reasonable attorney fees to be taxed by the court.  
31 Costs determined pursuant to this section shall include  
32 reasonable appraisal costs and expert witness fees.

33 Sec. 6. Section 422.7, Code 1999, is amended by adding the  
34 following new subsection:

35 NEW SUBSECTION. 35. Where the adjusted gross income

1 includes the gain realized when property of the taxpayer is  
2 converted as a result of condemnation, an additional deduction  
3 shall be allowed to the extent the gain was recognized under  
4 section 1033 of the Internal Revenue Code.

5 Sec. 7. APPLICABILITY DATE. Section 6 of this Act applies  
6 retroactively to January 1, 2000, for tax years beginning on  
7 or after that date.

8 EXPLANATION

9 This bill makes several changes to the law relating to  
10 condemnation of private property.

11 The bill provides that the costs of any proceedings seeking  
12 injunctive relief against a condemnation are to be paid by the  
13 party seeking the condemnation.

14 The bill provides that the appraisal of damages by the  
15 compensation commission, along with commission proceedings  
16 relating to determination of the appraisal, are admissible  
17 on appeal of the appraisal.

18 The bill also provides that damages paid by a condemner to  
19 the sheriff for transfer to the condemnee are to be  
20 immediately available and shall include interest earned at the  
21 federal treasury bill rate from the date of the award. The  
22 bill also provides that moneys not paid over by the sheriff by  
23 order of the court shall be deposited in an escrow account and  
24 shall earn interest on the amount.

25 The bill provides that costs awarded in a condemnation  
26 proceeding include the costs of appraisal and expert  
27 witnesses. The bill also provides that the condemner pay the  
28 costs of appeal if the amount awarded on appeal exceeds 110  
29 percent of the final offer of the condemner prior to  
30 condemnation.

31 Current law provides that the condemner shall pay costs  
32 incurred by the landowner, including attorney's fees, if the  
33 condemner fails to take the property and pay the appraisal  
34 of damages while the case is on appeal. The bill extends the  
35 responsibility of the condemner for payment of such costs in

1 those cases where the condemner dismisses the proceedings at  
2 any time after the application is filed and in cases where the  
3 condemner fails to take the property and pay damages awarded  
4 within 30 days from the date of the award.

5 Finally, the bill allows a taxpayer to deduct from Iowa net  
6 taxable income that portion of a condemnation award that is  
7 recognized as taxable gain for federal income tax purposes.  
8 This section of the bill applies retroactively to January 1,  
9 2000, for tax years beginning on or after that date.

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