

LOCAL GOVERNMENT

FILED JAN 24 2002

SENATE FILE

2042

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ZIEMAN

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 for state income tax purposes
3 of certain condemnation awards and providing a retroactive
4 applicability date.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 2042 LOCAL GOVERNMENT

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

3 If a landowner seeks to enjoin an action brought under this
4 chapter and the landowner prevails, the costs of the
5 proceedings shall be paid by the party seeking condemnation.

6 Sec. 2. Section 6B.21, Code 2001, is amended to read as
7 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, factoring in depreciation; and the availability of
22 replacement property.

23 Sec. 3. Section 6B.24, Code 2001, is amended to read as
24 follows:

25 6B.24 REDUCTION OF DAMAGES -- INTEREST ON INCREASED AWARD.

26 If the amount of damages awarded by the commissioners is
27 decreased on appeal, the reduced amount shall be paid to the
28 landowner. If the amount of damages awarded by the
29 commissioners is increased on appeal, interest shall be paid
30 from the date of the condemnation. ~~Interest shall not be paid~~
31 ~~on any amount which was previously paid.~~ Interest shall be
32 calculated at an annual rate equal to the ~~coupon-issue yield~~
33 ~~equivalent, as determined by the United States secretary of~~
34 ~~the treasury, of the average accepted auction price for the~~
35 ~~last auction of fifty-two week United States treasury bills~~

1 treasury constant maturity index published by the federal
2 reserve in the H15 Report settled immediately before the date
3 of the award.

4 Sec. 4. Section 6B.25, Code 2001, is amended to read as
5 follows:

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

7 Upon the filing of the commissioners' report with the
8 sheriff, the applicant may deposit with the sheriff the amount
9 assessed in favor of a claimant, and the applicant, except as
10 otherwise provided, may take possession of the land condemned
11 and proceed with the improvement. An appeal from the
12 assessment does not affect the right, except as otherwise
13 provided. Prior to expiration of the time provided for
14 appeal, the property owner may apply to the district court for
15 release of that part of the damages deposited which the court
16 finds proper. If there is not an appeal by any party, the
17 property owner shall be entitled to the whole of the damages
18 awarded. Upon appeal from the commissioners' award of
19 damages, the district court ~~may~~ shall direct that the ~~part-of~~
20 ~~the entire~~ amount of damages deposited with the sheriff ~~as-it~~
21 ~~finds-just-and-proper~~, be immediately paid to the claimant.
22 If upon trial of the appeal a lesser amount is awarded, the
23 difference between the amount so awarded and the amount paid
24 shall be repaid by the person to whom it was paid and upon
25 failure to make the repayment the party shall have judgment
26 entered against the person who received the excess payment.
27 Title to the property or the interests in property passes to
28 the applicant when damages have been finally determined and
29 paid.

30 The amount deposited with the sheriff shall include
31 interest from the date of the award until the date the amount
32 is paid to the claimant, calculated at an annual rate equal to
33 the treasury constant maturity index published by the federal
34 reserve in the H15 Report settled immediately before the date
35 of the award.

1 Sec. 5. Section 6B.33, Code 2001, is amended to read as
2 follows:

3 6B.33 COSTS AND ATTORNEY FEES.

4 The applicant shall pay all costs of the assessment made by
5 the commissioners and reasonable attorney fees and costs
6 incurred by the condemnee as determined by the commissioners
7 ~~if the award of the commissioners exceeds one hundred ten~~
8 ~~percent of the final offer of the applicant prior to~~
9 condemnation, including costs of appraisals and expert
10 witnesses. The applicant shall file with the sheriff an
11 affidavit setting forth the most recent offer made to the
12 person whose property is sought to be condemned. Members of
13 such commissions shall receive a per diem of two hundred
14 dollars and actual and necessary expenses incurred in the
15 performance of their official duties. The applicant shall
16 reimburse the county sheriff for the per diem and expense
17 amounts paid by the sheriff to the members. The applicant
18 shall reimburse the owner for the expenses the owner incurred
19 for recording fees, penalty costs for full or partial
20 prepayment of any preexisting recorded mortgage entered into
21 in good faith encumbering the property, and for similar
22 expenses incidental to conveying the property to the
23 applicant. The applicant shall also pay all costs occasioned
24 by the appeal, including reasonable attorney fees to be taxed
25 by the court, ~~unless on the trial thereof the same or a lesser~~
26 ~~amount of damages is awarded than was allowed by the tribunal~~
27 ~~from which the appeal was taken~~ and costs of appraisals and
28 expert witnesses.

29 Sec. 6. Section 6B.34, Code 2001, is amended to read as
30 follows:

31 6B.34 REFUSAL TO PAY FINAL AWARD.

32 Should If the applicant dismisses the proceedings at any
33 time after filing the application, or if the applicant decline
34 declines, at any time after an appeal is taken as provided in
35 section 6B.18, to take the property and pay the damages

1 awarded, the applicant shall pay, in addition to the costs and
2 damages actually suffered by the landowner, reasonable
3 attorney fees to be taxed by the court. If the applicant
4 fails to take the property and pay the damages awarded within
5 thirty days from the award by the commission, the proceedings
6 shall be dismissed at the applicant's cost and the applicant
7 shall pay, in addition to the costs and damages actually
8 suffered by the landowner, reasonable attorney fees to be
9 taxed by the court. Costs determined pursuant to this section
10 shall include reasonable appraisal costs and expert witness
11 fees.

12 Sec. 7. Section 422.7, Code Supplement 2001, is amended by
13 adding the following new subsection:

14 NEW SUBSECTION. 38. Where the adjusted gross income
15 includes the capital gain realized when property of the
16 taxpayer is converted as a result of condemnation or threat or
17 imminence of condemnation, an additional deduction shall be
18 allowed to the extent the gain was recognized under section
19 1033 of the Internal Revenue Code.

20 Sec. 8. APPLICABILITY DATE. Section 7 of this Act applies
21 retroactively to January 1, 2002, for tax years beginning on
22 or after that date.

23 EXPLANATION

24 This bill makes several changes to the law relating to
25 condemnation of private property.

26 The bill provides that the costs of any proceedings seeking
27 injunctive relief against a condemnation are to be paid by the
28 party seeking the condemnation if the landowner seeking
29 injunctive relief prevails.

30 The bill provides that the appraisal of damages by the
31 compensation commission, along with commission proceedings
32 relating to determination of the appraisal, is admissible
33 on appeal of the appraisal.

34 The bill strikes the requirement that if an award is
35 appealed interest shall not be paid on any amount which was

1 previously paid. The bill also establishes a new rate for the
2 calculation of interest that is based upon the treasury
3 constant maturity index published by the federal reserve.

4 The bill also provides that the entire amount of damages
5 paid by a condemner to the sheriff for transfer to the
6 condemnee are to be immediately available and shall include
7 interest earned from the date of the award.

8 The bill provides that the condemner shall pay costs
9 awarded in a condemnation proceeding, including the costs of
10 appraisal and expert witnesses. The bill also provides that
11 the condemner pay the costs of appeal.

12 Current law provides that the condemner shall pay costs
13 incurred by the landowner, including attorney fees, if the
14 condemner fails to take the property and pay the appraisement
15 of damages while the case is on appeal. The bill extends the
16 responsibility of the condemner for payment of such costs in
17 those cases where the condemner dismisses the proceedings at
18 any time after the application is filed and in cases where the
19 condemner fails to take the property and pay damages awarded
20 within 30 days from the date of the award.

21 Finally, the bill allows a taxpayer to deduct from Iowa net
22 taxable income that portion of a condemnation award that is
23 recognized as taxable capital gain for federal income tax
24 purposes. This section of the bill applies retroactively to
25 January 1, 2002, for tax years beginning on or after that
26 date.

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