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SENATE FILE 37

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 37 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 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; and the availability of replacement property.

22 Sec. 3. Section 6B.25, Code 2001, 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. Prior to expiration of the time provided for
32 appeal, the property owner may apply to the district court for
33 release of that part of the damages deposited which the court
34 finds proper. If there is not an appeal by any party, the
35 property owner shall be entitled to the whole of the damages

1 awarded. Upon appeal from the commissioners' award of
2 damages, the district court may direct that the part of the
3 amount of damages deposited with the sheriff, as it finds just
4 and proper, be paid to the claimant. Funds released by order
5 of the court shall be made immediately available to the
6 property owner. If upon trial of the appeal a lesser amount
7 is awarded, the difference between the amount so awarded and
8 the amount paid shall be repaid by the person to whom it was
9 paid and upon failure to make the repayment the party shall
10 have judgment entered against the person who received the
11 excess payment. Title to the property or the interests in
12 property passes to the applicant when damages have been
13 finally determined and paid.

14 The amount deposited with the sheriff shall include
15 interest from the date of the award, calculated at an annual
16 rate equal to the coupon issue yield equivalent, as determined
17 by the United States secretary of the treasury, of the average
18 accepted auction price for the last auction of fifty-two-week
19 United States treasury bills settled immediately before the
20 date of the award. Any amount deposited with the sheriff and
21 not paid to the claimant pursuant to court order pending
22 resolution of the appeal shall be placed in an interest-
23 bearing escrow account pending resolution of the appeal.
24 Failure to place the deposit in an interest-bearing account
25 shall not relieve the applicant from the responsibility to pay
26 interest on the amount finally awarded from the date of the
27 award.

28 Sec. 4. Section 6B.33, Code 2001, is amended to read as
29 follows:

30 6B.33 COSTS AND ATTORNEY FEES.

31 The applicant shall pay all costs of the assessment made by
32 the commissioners and reasonable attorney fees and costs
33 incurred by the condemnee as determined by the commissioners,
34 including costs of appraisals and expert witnesses, if the
5 award of the commissioners exceeds one hundred ten percent of

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

23 Sec. 5. Section 6B.34, Code 2001, is amended to read as
24 follows:

25 6B.34 REFUSAL TO PAY FINAL AWARD.

26 Should the applicant dismiss the proceedings at any time
27 after filing the application, or should the applicant decline,
28 at any time after an appeal is taken as provided in section
29 6B.18, to take the property and pay the damages awarded, the
30 applicant shall pay, in addition to the costs and damages
31 actually suffered by the landowner, reasonable attorney fees
32 to be taxed by the court. Should the applicant fail to take
33 the property and pay the damages awarded within thirty days
34 from the award by the commission, the proceedings shall be
35 dismissed at the applicant's cost and the applicant shall pay,

1 in addition to the costs and damages actually suffered by the
2 landowner, reasonable attorney fees to be taxed by the court.
3 Costs determined pursuant to this section shall include
4 reasonable appraisal costs and expert witness fees.

5 Sec. 6. Section 422.7, Code 2001, is amended by adding the
6 following new subsection:

7 NEW SUBSECTION. 36. Where the adjusted gross income
8 includes the gain realized when property of the taxpayer is
9 converted as a result of condemnation, an additional deduction
10 shall be allowed to the extent the gain was recognized under
11 section 1033 of the Internal Revenue Code.

12 Sec. 7. APPLICABILITY DATE. Section 6 of this Act applies
13 retroactively to January 1, 2001, for tax years beginning on
14 or after that date.

15 EXPLANATION

16 This bill makes several changes to the law relating to
17 condemnation of private property.

18 The bill provides that the costs of any proceedings seeking
19 injunctive relief against a condemnation are to be paid by the
20 party seeking the condemnation.

21 The bill provides that the appraisal of damages by the
22 compensation commission, along with commission proceedings
23 relating to determination of the appraisal, are admissible
24 on appeal of the appraisal.

25 The bill also provides that damages paid by a condemner to
26 the sheriff for transfer to the condemnee are to be
27 immediately available and shall include interest earned at the
28 federal treasury bill rate from the date of the award. The
29 bill also provides that moneys not paid over by the sheriff by
30 order of the court shall be deposited in an escrow account and
31 shall earn interest on the amount.

32 The bill provides that costs awarded in a condemnation
33 proceeding include the costs of appraisal and expert
34 witnesses. The bill also provides that the condemner pay the
35 costs of appeal if the amount awarded on appeal exceeds 110

1 percent of the final offer of the condemner prior to
2 condemnation.

3 Current law provides that the condemner shall pay costs
4 incurred by the landowner, including attorney fees, if the
5 condemner fails to take the property and pay the appraisalment
6 of damages while the case is on appeal. The bill extends the
7 responsibility of the condemner for payment of such costs in
8 those cases where the condemner dismisses the proceedings at
9 any time after the application is filed and in cases where the
10 condemner fails to take the property and pay damages awarded
11 within 30 days from the date of the award.

12 Finally, the bill allows a taxpayer to deduct from Iowa net
13 taxable income that portion of a condemnation award that is
14 recognized as taxable gain for federal income tax purposes.
15 This section of the bill applies retroactively to January 1,
16 2001, for tax years beginning on or after that date.

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