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SENATE FILE 172

BY JOHNSON

LOCAL GOVERNMENT

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to condemnation proceedings.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 172

LOCAL GOVERNMENT

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

3 The cost of a proceeding brought by a landowner to enjoin
4 the exercise of power granted under this chapter shall be paid
5 by the party seeking condemnation.

6 Sec. 2. Section 6B.21, Code 2005, is amended to read as
7 follows:

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

9 1. 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.

16 2. Records of the compensation commission proceedings are
17 admissible on appeal, including the appraisement of damages,
18 matters considered by the commission, other comparable final
19 condemnation awards or purchases under threat of condemnation,
20 replacement cost, and the availability of replacement
21 property.

22 Sec. 3. Section 6B.25, unnumbered paragraph 1, Code 2005,
23 is amended to read as follows:

24 Upon the filing of the commissioners' report with the
25 sheriff, the applicant may deposit with the sheriff the amount
26 assessed in favor of a claimant, and the applicant, except as
27 otherwise provided, may take possession of the land condemned
28 and proceed with the improvement. The amount deposited shall
29 include interest from the date of the award, calculated in the
30 same manner as provided in section 6B.24. An appeal from the
31 assessment does not affect the right, except as otherwise
32 provided. Prior to expiration of the time provided for
33 appeal, the property owner may apply to the district court for
34 release of that part of the damages deposited which the court
35 finds proper. If there is not an appeal by any party, the

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

15 Sec. 4. Section 6B.33, Code 2005, is amended to read as
16 follows:

17 6B.33 COSTS AND ATTORNEY FEES.

18 The applicant shall pay all costs of the assessment made by
19 the commissioners and reasonable attorney fees and costs
20 incurred by the condemnee as determined by the commissioners,
21 including the cost of appraisals and expert witnesses, if the
22 award of the commissioners exceeds one hundred ten percent of
23 the final offer of the applicant prior to condemnation. The
24 condemnee shall submit an application for fees and costs prior
25 to adjournment of the final meeting of the compensation
26 commission held on the matter. The applicant shall file with
27 the sheriff an affidavit setting forth the most recent offer
28 made to the person whose property is sought to be condemned.
29 Members of such commissions shall receive a per diem of two
30 hundred dollars and actual and necessary expenses incurred in
31 the performance of their official duties. The applicant shall
32 reimburse the county sheriff for the per diem and expense
33 amounts paid by the sheriff to the members. The applicant
34 shall reimburse the owner for the expenses the owner incurred
35 for recording fees, penalty costs for full or partial

1 prepayment of any preexisting recorded mortgage entered into
2 in good faith encumbering the property, and for similar
3 expenses incidental to conveying the property to the
4 applicant. The applicant shall also pay all costs occasioned
5 by the appeal, including the costs of appraisals and expert
6 witnesses, and reasonable attorney fees to be taxed by the
7 court, unless on the trial thereof the same or a lesser amount
8 of damages is awarded than was allowed by the tribunal from
9 which the appeal was taken.

10 Sec. 5. Section 6B.34, Code 2005, is amended to read as
11 follows:

12 6B.34 REFUSAL TO PAY FINAL AWARD.

13 ~~Should~~ If the applicant dismisses the proceedings at any
14 time after filing the application, or if the applicant ~~decline~~
15 declines, at any time after an appeal is taken as provided in
16 section 6B.18, to take the property and pay the damages
17 awarded, the applicant shall pay, ~~in addition to~~ the costs,
18 including the cost of appraisals and expert witnesses, and
19 damages actually suffered by the landowner, and reasonable
20 attorney fees to be taxed by the court.

21 Sec. 6. Section 6B.53, Code 2005, is amended to read as
22 follows:

23 6B.53 PROCEDURE FOR HOMESTEADING PROJECTS.

24 If the purpose of condemnation is to obtain property for
25 use as part of an Iowa homesteading project under section
26 16.14, the application required under section 6B.3 may contain
27 a verified statement that the property sought to be condemned
28 is abandoned and deteriorating in condition, or is inhabited
29 but is not safe for human habitation, or is or is likely to
30 become a public nuisance, and that the property is suitable
31 for use and is to be used in an Iowa homesteading project.
32 Other information may be included. The statement must be
33 verified by the Iowa finance authority or by a local agency
34 authorized under rules of the authority. Upon proper filing of
35 the statement and the report of the condemnation commission

1 assessing damages, and deposit of the amount assessed,
2 including interest as required under section 6B.25, with the
3 sheriff, the applicant for condemnation may take possession as
4 provided in section 6B.25 if the property is abandoned, or may
5 take steps to obtain possession after ninety days from the
6 date of the filing of the statement, report, and deposit, if
7 the property is inhabited.

8 Sec. 7. Section 422.7, Code 2005, is amended by adding the
9 following new subsection:

10 NEW SUBSECTION. 44. Where the adjusted gross income
11 includes the gain realized when property of the taxpayer is
12 converted as a result of condemnation, an additional deduction
13 shall be allowed to the extent the gain is recognized under
14 section 1033 of the Internal Revenue Code.

15 Sec. 8. RETROACTIVE APPLICABILITY. Section 7 of this Act,
16 amending section 422.7, is retroactively applicable to January
17 1, 2005, and is applicable for tax years beginning on and
18 after that date.

19 **EXPLANATION**

20 This bill relates to condemnation proceedings.

21 The bill provides in Code section 6A.22 that a party
22 seeking condemnation must pay the cost of a proceeding to
23 enjoin the condemnation.

24 The bill provides in Code section 6B.21 that a record of
25 the compensation commission proceedings, including the
26 appraisal of damages, matters considered by the commission,
27 other comparable final condemnation awards or purchases under
28 threat of condemnation, replacement cost, and the availability
29 of replacement property is admissible on appeal.

30 The bill provides in Code section 6B.25 that when a party's
31 application for condemnation has been approved, such party may
32 deposit with the sheriff the amount of damages awarded with
33 interest from the date of the award. The bill also provides
34 that when the court orders the release of such funds awarded,
35 the sheriff shall make the funds immediately available to the

1 property owner.

2 Code sections 6B.33 and 6B.34 are amended to specify that
3 costs assigned to a party seeking condemnation include the
4 cost of appraisals and expert witnesses. Also, the bill
5 provides that if the party seeking condemnation dismisses the
6 proceedings after filing an application for condemnation, such
7 party shall pay costs.

8 The bill provides a taxpayer, whose property is converted
9 as a result of condemnation, a tax deduction for the gain
10 realized to the extent the gain is recognized under the
11 Internal Revenue Code. The tax deduction applies
12 retroactively to January 1, 2005.

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