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State of Minnesota  
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 3490

03/23/2016 Authored by Gruenhagen

The bill was read for the first time and referred to the Committee on Civil Law and Data Practices

1.1 A bill for an act  
1.2 relating to eminent domain; providing for attorney fees; amending Minnesota  
1.3 Statutes 2014, sections 117.031; 117.105, subdivision 1; Minnesota Statutes  
1.4 2015 Supplement, section 117.036, subdivisions 2, 4.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2014, section 117.031, is amended to read:

1.7 **117.031 ATTORNEY FEES.**

1.8 (a) If the final judgment or final award for damages, ~~as determined at any level in the~~  
1.9 ~~eminent domain process~~, is more than 40 percent greater than the last highest written offer  
1.10 of compensation made by the condemning authority ~~prior to the filing of the petition~~ no  
1.11 later than 30 days after receipt of the owner's appraisal, the court shall award the owner  
1.12 reasonable attorney fees, litigation expenses, appraisal fees, other experts fees, and other  
1.13 related costs in addition to other compensation and fees authorized by this chapter. If the  
1.14 final judgment or final award is at least 20 percent, but not more than 40 percent, greater  
1.15 than the ~~last highest~~ written offer made no later than 30 days after receipt of the owner's  
1.16 appraisal, the court may award reasonable attorney fees, expenses, and other costs and fees  
1.17 as provided in this paragraph. The final judgment or award of damages shall be determined  
1.18 as of the date of taking. No attorney fees shall be awarded under this paragraph if the final  
1.19 judgment or award of damages does not exceed \$25,000. For the purposes of this section;  
1.20 (1) the "final judgment or final award for damages" does not include any amount for loss  
1.21 of a going concern unless that was included in the last written offer by the condemning  
1.22 authority; and (2) "final award" means an award of the commissioners that is not appealed.

1.23 (b) In any case where the court determines that a taking is not for a public use or  
1.24 is unlawful, the court shall award the owner reasonable attorney fees and other related

2.1 expenses, fees, and costs in addition to other compensation and fees authorized by this  
2.2 chapter.

2.3 Sec. 2. Minnesota Statutes 2015 Supplement, section 117.036, subdivision 2, is  
2.4 amended to read:

2.5 Subd. 2. **Appraisal.** (a) Before commencing an eminent domain proceeding under  
2.6 this chapter for an acquisition greater than \$25,000, the acquiring authority must obtain  
2.7 at least one appraisal for the property proposed to be acquired. In making the appraisal,  
2.8 the appraiser must confer with one or more of the owners of the property, if reasonably  
2.9 possible. For acquisitions less than \$25,000, the acquiring authority may obtain a  
2.10 minimum damage acquisition report in lieu of an appraisal. In making the minimum  
2.11 damage acquisition report, the qualified person with appraisal knowledge must confer with  
2.12 one or more of the owners of the property, if reasonably possible. Notwithstanding section  
2.13 13.44, the acquiring authority must provide the owner with a copy of (1) each appraisal  
2.14 for property acquisitions over \$25,000, or (2) the minimum damage acquisition report  
2.15 for properties under \$25,000, the acquiring authority has obtained for the property at the  
2.16 time an offer is made, but no later than 60 days before presenting a petition under section  
2.17 117.055. The acquiring authority must also inform the owner of the right to obtain an  
2.18 appraisal under this section. Upon request, the acquiring authority must make available to  
2.19 the owner all appraisals for properties over \$25,000, or the minimum damage acquisition  
2.20 report for properties under \$25,000. If the acquiring authority is considering both a full  
2.21 and partial taking of the property, the acquiring authority shall obtain and provide the  
2.22 owner with appraisals for properties over \$25,000 for both types of takings, or minimum  
2.23 damage acquisition reports for properties under \$25,000.

2.24 (b) The owner may obtain an appraisal by a qualified appraiser of the property  
2.25 proposed to be acquired. The owner is entitled to reimbursement for the reasonable costs  
2.26 of the appraisal from the acquiring authority up to a maximum of \$1,500 for single family  
2.27 and two-family residential property and minimum damage acquisitions and \$5,000 for  
2.28 other types of property, provided that the owner submits to the acquiring authority the  
2.29 information necessary for reimbursement, including a copy of the owner's appraisal,  
2.30 at least ~~five~~ 90 days before a condemnation commissioners' hearing. For purposes of  
2.31 this subdivision, a "minimum damage acquisition" means an interest in property that a  
2.32 qualified person having an understanding of the local real estate market indicates can  
2.33 be acquired for \$25,000 or less.

2.34 (c) The acquiring authority must pay the reimbursement to the owner within 30  
2.35 days after receiving a copy of the appraisal and the reimbursement information. Upon

3.1 agreement between the acquiring authority and the owner, the acquiring authority may pay  
3.2 the reimbursement directly to the appraiser.

3.3 Sec. 3. Minnesota Statutes 2015 Supplement, section 117.036, subdivision 4, is  
3.4 amended to read:

3.5 Subd. 4. **Use of appraisal at commissioners' hearing.** An appraisal or  
3.6 minimum damage acquisition report must not be used or considered in a condemnation  
3.7 commissioners' hearing, nor may the appraiser who prepared the appraisal or the person  
3.8 who prepared the minimum damage acquisition report testify, unless a copy of the  
3.9 appraiser's written report or the minimum damage acquisition report is provided to the  
3.10 opposing party at least five days before the hearing. Notwithstanding any other law to the  
3.11 contrary, a party who fails to produce an appraisal at least 90 days before the hearing shall  
3.12 not be eligible for an award of fees, expenses, and costs under section 117.031.

3.13 Sec. 4. Minnesota Statutes 2014, section 117.105, subdivision 1, is amended to read:

3.14 Subdivision 1. **Filing of report.** The report of the commissioners shall be filed  
3.15 with the court administrator of district court within ~~90~~ 180 days from the date of the  
3.16 order appointing the commissioners, unless such order otherwise prescribes, but for  
3.17 cause shown upon written motion of the petitioner and not less than three days' notice  
3.18 thereof duly served by mail or otherwise upon such respondents, or their attorneys who  
3.19 entered an appearance at the hearing on the petition or notified the petitioner of their  
3.20 formal appearance, the court may extend the time for making and filing the report. If the  
3.21 petitioner serves such motion and notice thereof by mail, such service shall be at least six  
3.22 days prior to the date of the hearing on the motion.

3.23 Sec. 5. **EFFECTIVE DATE.**

3.24 Sections 1 to 4 are effective the day following final enactment.