

State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 3253

03/21/2014 Authored by Beard and Albright

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

1.1 A bill for an act
1.2 relating to eminent domain; modifying appraisal and attorney fee requirements;
1.3 amending Minnesota Statutes 2012, sections 117.031; 117.036, subdivisions 2, 4.

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

1.5 Section 1. Minnesota Statutes 2012, section 117.031, is amended to read:

1.6 **117.031 ATTORNEY FEES.**

1.7 (a) If the final judgment or award for damages, as determined at any level in the
1.8 eminent domain process, is more than 40 percent greater than the last written offer of
1.9 compensation made by the condemning authority prior to the filing of the petition or, if
1.10 the owner provided the acquiring authority with an appraisal, the last written offer made
1.11 after receipt of the appraisal by the condemning authority, 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 award is at least 20 percent, but not more than 40 percent, greater than
1.15 the last written offer, the court may award reasonable attorney fees, expenses, and other
1.16 costs and fees as provided in this paragraph. The final judgment or award of damages
1.17 shall be determined as of the date of taking. No attorney fees shall be awarded under this
1.18 paragraph if the final judgment or award of damages does not exceed \$25,000. For the
1.19 purposes of this section, the "final judgment or award for damages" does not include any
1.20 amount for loss of a going concern unless that was included in the last written offer by
1.21 the condemning authority.

1.22 (b) In any case where the court determines that a taking is not for a public use or
1.23 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 2012, section 117.036, subdivision 2, is amended to read:

2.4 Subd. 2. **Appraisal.** (a) Before commencing an eminent domain proceeding under
2.5 this chapter, the acquiring authority must obtain at least one appraisal for the property
2.6 proposed to be acquired. In making the appraisal, the appraiser must confer with one
2.7 or more of the owners of the property, if reasonably possible. Notwithstanding section
2.8 13.44, the acquiring authority must provide the owner with a copy of each appraisal the
2.9 acquiring authority has obtained for the property at the time an offer is made, but no later
2.10 than 60 days before presenting a petition under section 117.055, and inform the owner of
2.11 the right to obtain an appraisal under this section. Upon request, the acquiring authority
2.12 must make available to the owner all appraisals of the property. If the acquiring authority
2.13 is considering both a full and partial taking of the property, the acquiring authority shall
2.14 obtain and provide the owner with appraisals for both types of takings.

2.15 (b) The owner may obtain an appraisal by a qualified appraiser of the property
2.16 proposed to be acquired. The owner is entitled to reimbursement for the reasonable costs
2.17 of the appraisal from the acquiring authority up to a maximum of \$1,500 for single family
2.18 and two-family residential property and minimum damage acquisitions and \$5,000 for
2.19 other types of property, provided that the owner submits to the acquiring authority the
2.20 information necessary for reimbursement, including a copy of the owner's appraisal, at
2.21 least ~~five~~ 30 days before a condemnation commissioners' hearing. For purposes of this
2.22 paragraph, a "minimum damage acquisition" means an interest in property that a qualified
2.23 person with appraisal knowledge indicates can be acquired for a cost of \$10,000 or less.

2.24 (c) The acquiring authority must pay the reimbursement to the owner within 30
2.25 days after receiving a copy of the appraisal and the reimbursement information. Upon
2.26 agreement between the acquiring authority and the owner, the acquiring authority may pay
2.27 the reimbursement directly to the appraiser.

2.28 (d) At the time an owner rejects a written offer of compensation from the acquiring
2.29 authority or makes a counteroffer, the owner shall provide the acquiring authority with
2.30 a copy of any appraisal of the property that has been obtained by the owner and not
2.31 previously provided to the acquiring authority. If the owner subsequently obtains an
2.32 appraisal, the owner shall provide the acquiring authority with a copy of the appraisal
2.33 within ten days of obtaining the appraisal.

2.34 Sec. 3. Minnesota Statutes 2012, section 117.036, subdivision 4, is amended to read:

3.1 Subd. 4. **Use of appraisal at commissioners' hearing.** An appraisal must not be
3.2 used or considered in a condemnation commissioners' hearing, nor may the appraiser who
3.3 prepared the appraisal testify, unless a copy of the appraiser's written report is provided to
3.4 the opposing party at least ~~five~~ 30 days before the hearing, or at an earlier time required
3.5 under subdivision 2, paragraph (d).