



2011 ASSEMBLY BILL 731

March 15, 2012 - Introduced by Representative HONADEL. Referred to Committee on Energy and Utilities.

1 **AN ACT to amend** 32.05 (2) (b), 32.05 (2a), 32.06 (2) (b) and 32.06 (2a); and **to**
2 **create** 32.28 (1m) of the statutes; **relating to:** appraisals, appeals from
3 compensation amounts, and attorney fees in condemnation proceedings.

Analysis by the Legislative Reference Bureau

This bill makes the following changes in the laws governing condemnation proceedings:

1. Current law requires a condemnor to provide a property owner with an appraisal of the property and to inform the owner of his or her right to obtain an appraisal of the property at the condemnor's expense. If the owner obtains an appraisal, he or she must submit it to the condemnor within 60 days of receiving the condemnor's appraisal.

This bill provides that in any subsequent appeal, the owner may use only the appraisal received from the condemnor or the appraisal submitted to the owner, as described above.

2. Current law authorizes a property owner to appeal to the condemnation commission or circuit court the amount of compensation agreed to by the owner in cases where acquisition of the property occurred as the result of a negotiated settlement. The appeal must be filed within six months after the conveyance is recorded.

This bill eliminates this provision. The property owner retains the right to refuse a negotiated settlement and appeal the amount of a subsequent condemnation award.

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3. Under current law, court costs must be allowed in any condemnation proceeding except in certain circumstances. The court must award litigation expenses (a higher amount that includes reasonable attorney, appraisal, and engineering fees) to the condemnee if the award of the condemnation commission or a jury verdict exceeds the jurisdictional offer or the highest written offer prior to the jurisdictional offer by at least \$700 and at least 15 percent.

This bill provides that if the award of the condemnation commission meets that condition, reasonable attorney fees are limited to an amount equal to one-third of the amount of that award. The bill also provides that if the condemnee appeals the award of the condemnation commission, and the jury verdict meets that standard or exceeds the award of the condemnation commission by at least \$700 and at least 15 percent, reasonable attorney fees are limited to an amount equal to one-third of the difference between the award of the condemnation commission and the jury verdict.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 32.05 (2) (b) of the statutes is amended to read:

2 32.05 (2) (b) The condemnor shall provide the owner with a full narrative
3 appraisal upon which the jurisdictional offer is based and a copy of any other
4 appraisal made under par. (a) and at the same time shall inform the owner of his or
5 her right to obtain an appraisal under this paragraph. The owner may obtain an
6 appraisal by a qualified appraiser of all property proposed to be acquired, and may
7 submit the reasonable costs of the appraisal to the condemnor for payment. The
8 owner shall submit a full narrative appraisal to the condemnor within 60 days after
9 the owner receives the condemnor's appraisal. If the owner does not accept a
10 negotiated offer under sub. (2a) or the jurisdictional offer under sub. (3), the owner
11 may use only an appraisal prepared received from the condemnor under this
12 paragraph, or an appraisal submitted by the owner to the condemnor prior to the
13 date of service or mailing of the jurisdictional offer or the date of publication if
14 publication of the jurisdictional offer is necessary, in any subsequent appeal.

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1 **SECTION 2.** 32.05 (2a) of the statutes is amended to read:

2 32.05 (2a) NEGOTIATION. Before making the jurisdictional offer provided in sub.

3 (3), the condemnor shall attempt to negotiate personally with the owner or one of the

4 owners or his or her representative of the property sought to be taken for the

5 purchase of the same. In such negotiation the condemnor shall consider the owner's

6 appraisal under sub. (2) (b) and may contract to pay the items of compensation

7 enumerated in ss. 32.09 and 32.19 as may be applicable to the property in one or more

8 installments on such conditions as the condemnor and property owners may agree.

9 Before attempting to negotiate under this ~~paragraph~~ subsection, the condemnor

10 shall provide the owner or his or her representative with copies of applicable

11 pamphlets prepared under s. 32.26 (6). When negotiating under this subsection, the

12 condemnor shall provide the owner or his or her representative with the names of at

13 least 10 neighboring landowners to whom offers are being made, or a list of all

14 offerees if less than 10 owners are affected, together with a map showing all property

15 affected by the project. Upon request by an owner or his or her representative, the

16 condemnor shall provide the name of the owner of any other property which may be

17 taken for the project. The owner or his or her representative shall also have the right,

18 upon request, to examine any maps in the possession of the condemnor showing

19 property affected by the project. The owner or his or her representative may obtain

20 copies of such maps by tendering the reasonable and necessary costs of preparing

21 copies. The condemnor shall record any conveyance by or on behalf of the owner of

22 the property to the condemnor executed as a result of negotiations under this

23 subsection with the register of deeds of the county in which the property is located.

24 The conveyance shall state the identity of all persons having an interest of record in

25 the property immediately prior to its conveyance, the legal description of the

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1 property, the nature of the interest acquired and the compensation for such
2 acquisition. The condemnor shall serve upon or mail by certified mail to all persons
3 named therein a copy of the conveyance ~~and a notice of the right to appeal the amount~~
4 ~~of compensation under this subsection. Any person named in the conveyance may,~~
5 ~~within 6 months after the date of its recording, appeal from the amount of~~
6 ~~compensation therein stated in the manner set forth in subs. (9) to (12) and chs. 808~~
7 ~~and 809 for appeals from an award under sub. (7). For purposes of any such appeal,~~
8 ~~the amount of compensation stated in the conveyance shall be treated as the award~~
9 ~~and the date the conveyance is recorded shall be treated as the date of taking and the~~
10 ~~date of evaluation.~~

11 **SECTION 3.** 32.06 (2) (b) of the statutes is amended to read:

12 32.06 (2) (b) The condemnor shall provide the owner with a full narrative
13 appraisal upon which the jurisdictional offer is based and a copy of any appraisal
14 made under par. (a) and at the same time shall inform the owner of his or her right
15 to obtain an appraisal under this paragraph. The owner may obtain an appraisal by
16 a qualified appraiser of all property proposed to be acquired, and submit the
17 reasonable costs of the appraisal to the condemnor for payment. The owner shall
18 submit a full narrative appraisal to the condemnor within 60 days after the owner
19 receives the condemnor's appraisal. If the owner does not accept a negotiated offer
20 under sub. (2a) or the jurisdictional offer under sub. (3), the owner may use only an
21 appraisal prepared received from the condemnor under this paragraph, or an
22 appraisal submitted by the owner to the condemnor prior to the date of service or
23 mailing of the jurisdictional offer or the date of publication if publication of the
24 jurisdictional offer is necessary, in any subsequent appeal.

25 **SECTION 4.** 32.06 (2a) of the statutes is amended to read:

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1 32.06 (2a) AGREED PRICE. Before making the jurisdictional offer under sub. (3)
2 the condemnor shall attempt to negotiate personally with the owner or one of the
3 owners or his or her representative of the property sought to be taken for the
4 purchase of the same. In such negotiation the condemnor shall consider the owner's
5 appraisal under sub. (2) (b) and may contract to pay the items of compensation
6 enumerated in ss. 32.09 and 32.19 where shown to exist. Before attempting to
7 negotiate under this ~~paragraph~~ subsection, the condemnor shall provide the owner
8 or his or her representative with copies of applicable pamphlets prepared under s.
9 32.26 (6). When negotiating under this subsection, the condemnor shall provide the
10 owner or his or her representative with the names of at least 10 neighboring
11 landowners to whom offers are being made, or a list of all offerees if less than 10
12 owners are affected, together with a map showing all property affected by the project.
13 Upon request by an owner or his or her representative, the condemnor shall provide
14 the name of the owner of any other property which may be taken for the project. The
15 owner or his or her representative shall also have the right, upon request, to examine
16 any maps in the possession of the condemnor showing property affected by the
17 project. The owner or his or her representative may obtain copies of such maps by
18 tendering the reasonable and necessary costs of preparing copies. The condemnor
19 shall record any conveyance by or on behalf of the owner of the property to the
20 condemnor executed as a result of negotiations under this subsection with the
21 register of deeds of the county in which the property is located. The condemnor shall
22 also record a certificate of compensation stating the identity of all persons having an
23 interest of record in the property immediately prior to its conveyance, the legal
24 description of the property, the nature of the interest acquired and the compensation
25 for such acquisition. The condemnor shall serve upon or mail by certified mail to all

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1 persons named therein a copy of the statement and a notice of the right to appeal the
2 amount of compensation under this subsection. Any person named in the certificate
3 may, within 6 months after the date of its recording, appeal from the amount of
4 compensation therein stated by filing a petition with the judge of the circuit court of
5 the county in which the property is located for proceedings to determine the amount
6 of just compensation. Notice of such petition shall be given to all persons having an
7 interest of record in such property. The judge shall forthwith assign the matter to
8 the chairperson of the county condemnation commissioners for hearing under sub.
9 (8). The procedures prescribed under subs. (9) (a) and (b), (10) and (12) and chs. 808
10 and 809 shall govern such appeals. The date the conveyance is recorded shall be
11 treated as the date of taking and the date of evaluation.

12 **SECTION 5.** 32.28 (1m) of the statutes is created to read:

13 32.28 **(1m)** In this section, reasonable attorney fees may not exceed the
14 following amounts:

15 (a) In sub. (3) (d), one-third of the award of the condemnation commission.

16 (b) In sub. (3) (f) and (h), one-third of the difference between the award of the
17 condemnation commission and the jury verdict.

18 **SECTION 6. Initial applicability.**

19 (1) The treatment of sections 32.05 (2) (b) and 32.06 (2) (b) of the statutes first
20 applies to an appraisal obtained by an owner on the effective date of this subsection.

21 (2) The treatment of sections 32.05 (2a) and 32.06 (2a) of the statutes first
22 applies to conveyances recorded with the register of deeds on the effective date of this
23 subsection.

