



1995 ASSEMBLY BILL 466

June 27, 1995 - Introduced by LAW REVISION COMMITTEE. Referred to Committee on Judiciary.

- 1 **AN ACT to amend** 32.28 (3) (intro.) and (b) of the statutes; **relating to:** the award
2 of litigation expenses in condemnation proceedings.

Analysis by the Legislative Reference Bureau

Under current law, court costs must be allowed in any condemnation proceeding except in certain specified 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%.

In *Village of Shorewood v. Steinberg*, 166 Wis.2d 794, 480 N.W. 2d 780 (Ct. App. 1992), the court found that the applicable statute fails to provide a procedure for the adjudication of contested litigation expenses when no appeal to circuit court is taken from the award made by the condemnation commission. The statute provides that a "court" awards litigation expenses. Thus, the court in *Village of Shorewood* was faced with the following issue: when there is no appeal to circuit court, may the judge who assigned the matter to the condemnation commission award litigation costs? The court concluded that "court" in the statute was an inexact way of referring to the judge, who could act in an administrative capacity under the statute to award litigation expenses. This bill codifies the *Village of Shorewood* decision.

For further information, see the NOTES provided by the law revision committee of the joint legislative council.

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

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is introduced by the law revision committee under s. 13.83 (1) (c) 1., stats. After careful consideration of the court of appeals decision in *Village of Shorewood v. Steinberg*, 166 Wis. 2d. 794 (Ct. App. 1992).

the law revision committee has determined that codifying this decision is desirable as a matter of public policy.

1 **SECTION 1.** 32.28 (3) (intro.) and (b) of the statutes are amended to read:

2 32.28 **(3)** (intro.) In lieu of costs under ch. 814, ~~the court shall award~~ litigation
3 expenses shall be awarded to the condemnee if:

4 (b) The condemnation commission or a court determines that the condemnor
5 does not have the right to condemn part or all of the property described in the
6 jurisdictional offer or there is no necessity for its taking;

NOTE: This bill clarifies that an award of litigation expenses shall be made to the condemnee in a condemnation proceeding assigned by a judge to the condemnation commission, as well as by a court, when a determination is made that the condemnor does not have the right to condemn part or all of the property described in the jurisdictional offer or there is no necessity for its taking.

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(END)