



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB0699

Introduced 02/01/05, by Rep. Joseph M. Lyons

SYNOPSIS AS INTRODUCED:

735 ILCS 5/7-102.3 new

735 ILCS 5/7-102.5 new

Amends the Code of Civil Procedure. Provides for the reimbursement of costs and attorney's fees for the defendant in a eminent domain condemnation proceeding. Sets out a rate schedule for attorney's fees based upon the benefit to the defendant and a list of factors that the court shall consider when determining the amount of those fees.

LRB094 07040 LCB 37182 b

FISCAL NOTE ACT
MAY APPLY

STATE MANDATES
ACT MAY REQUIRE
REIMBURSEMENT

1 AN ACT concerning civil procedure.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Code of Civil Procedure is amended by adding
5 Sections 7-102.3 and 7-102.5 as follows:

6 (735 ILCS 5/7-102.3 new)

7 Sec. 7-102.3. Costs; condemnation proceedings.

8 (a) The petitioner shall pay attorney's fees as provided in
9 Section 7-102.5 as well as all reasonable costs incurred in the
10 defense of the proceedings in the circuit court including, but
11 not limited to, reasonable appraisal fees and, when business
12 damages are compensable, a reasonable accountant's fee to be
13 assessed by that court. No prejudgment interest shall be paid
14 on costs or attorney's fees.

15 (b) At least 30 days prior to a hearing to assess costs
16 under this Section, the condemnee's attorney shall submit to
17 the condemning authority for each expert witness complete time
18 records and a detailed statement of services rendered by date,
19 nature of services performed, time spent performing the
20 services, and the costs incurred and a copy of any fee
21 agreement that may exist between the expert and the condemnee
22 or the condemnee's attorney.

23 (c) In assessing costs, the court shall consider all
24 factors relevant to the reasonableness of the costs including,
25 but not limited to, the fees paid to similar experts retained
26 in the case by the condemning authority or other parties and
27 the reasonable costs of similar services by similarly qualified
28 persons.

29 (d) In assessing costs to be paid by the petitioner, the
30 court shall be guided by the amount the defendant would
31 ordinarily have been expected to pay for the services rendered
32 if the petitioner were not responsible for the costs.

1 (e) The court shall make specific findings that justify
2 each sum awarded as an expert witness fee.

3 (735 ILCS 5/7-102.5 new)

4 Sec. 7-102.5. Attorney's fees; condemnation proceedings.

5 (a) Except as otherwise provided in this Section, the
6 court, in eminent domain condemnation proceedings, shall award
7 attorney's fees based solely on the benefits achieved for the
8 client.

9 (b) As used in this Section, the term "benefits" means the
10 difference, excluding interest, between the final judgment or
11 settlement and the last written offer made by the condemning
12 authority before the defendant hires an attorney. If no written
13 offer is made by the condemning authority before the defendant
14 hires an attorney, benefits must be measured from the first
15 written offer after the attorney is hired.

16 (c) In determining attorney's fees: (i) if business records
17 that are kept by the owner in the ordinary course of business
18 were provided to the condemning authority to substantiate the
19 claim of damage to a business, benefits for amounts awarded for
20 business damages must be based on the difference between the
21 final judgment or settlement and the latest written
22 counteroffer made by the condemning authority, if any; and (ii)
23 if existing business records that are kept by the owner in the
24 ordinary course of business were not provided to the condemning
25 authority to substantiate the claim of damage to a business and
26 those records that were not provided are later deemed material
27 to the determination of business damages, benefits for amounts
28 awarded for business damages must be based upon the difference
29 between the final judgment or settlement and the first written
30 counteroffer made by the condemning authority within 90 days
31 from the condemning authority's receipt of the business records
32 previously not provided.

33 (d) Attorney's fees based on benefits achieved shall be
34 awarded in accordance with the following schedule:

35 (1) 33% of any benefit up to \$250,000; plus

1 (2) 25% of any portion of the benefit between \$250,000
2 and \$1 million; plus

3 (3) 20% of any portion of the benefit exceeding \$1
4 million.

5 (e) In assessing attorney's fees incurred in defeating an
6 order of taking or for apportionment or for any other
7 supplemental proceedings, when not otherwise provided for, the
8 court shall consider:

9 (1) The novelty, difficulty, and importance of the
10 questions involved.

11 (2) The skill employed by the attorney in conducting
12 the cause.

13 (3) The amount of money involved.

14 (4) The responsibility incurred and fulfilled by the
15 attorney.

16 (5) The attorney's time and labor reasonably required
17 adequately to represent the client in relation to the
18 benefits resulting to the client.

19 (6) The fee or rate of fee customarily charged for
20 legal services of a comparable or similar nature.

21 (7) Nonmonetary benefits obtained for the client
22 through the efforts of the attorney, to the extent that the
23 nonmonetary benefits are specifically identified by the
24 court and can, within a reasonable degree of certainty, be
25 quantified.

26 (f) In determining the amount of attorney's fees to be paid
27 by the petitioner under subsection (e) of this Section, the
28 court shall be guided by the fees the defendant would
29 ordinarily be expected to pay for these services if the
30 petitioner were not responsible for the payment of those fees.

31 (g) At least 30 days prior to a hearing to assess
32 attorney's fees under subsection (e) of this Section, the
33 condemnee's attorney shall submit to the condemning authority
34 and to the court complete time records and a detailed statement
35 of services rendered by date, nature of services performed,
36 time spent performing the services, and the costs incurred.

1 (h) The defendant shall provide the court with a copy of
2 any fee agreement that may exist between the defendant and his
3 or her attorney, and the court shall reduce the amount of
4 attorney's fees to be paid by the defendant by the amount of
5 any attorney's fees awarded by the court.