

## LEGISLATIVE BILL 222

Approved by the Governor March 29, 1995

Introduced by Hall, 7; Hudkins, 21; Chambers, 11; Beutler, 28

AN ACT relating to eminent domain; to amend sections 76-717 and 76-720, Reissue Revised Statutes of Nebraska; to change provisions relating to appeals of awards; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 76-717, Reissue Revised Statutes of Nebraska, is amended to read:

76-717. Within thirty days after the filing of such notice of appeal, the county judge shall prepare and transmit to the clerk of the district court a duly certified transcript of all proceedings had concerning the parcel or parcels of land as to which the particular condemnee takes the appeal upon payment of the fees provided by law for preparation thereof. When notice of appeal is filed by both the condemner and the condemnee, such transcript shall be prepared only in response to the first notice of appeal. ~~The transcript prepared in response to the second notice of appeal shall contain only a copy of such notice and the proceedings shall be docketed in the district court as a single cause of action.~~

~~The filing of the notice of appeal shall confer jurisdiction on the district court. Regardless of which party appeals, the condemnee The first party to perfect an appeal shall file a petition on appeal in the district court within fifty days of after the filing of the notice of appeal. If no petition is filed, the court shall direct the condemnee first party to perfect an appeal to file a petition and impose such sanctions as are reasonable. The proceeding shall in all cases be docketed in the district court, showing the condemnee as the plaintiff and the condemner as the defendant. The appeal shall be tried de novo in the district court. Such appeal shall not delay the acquisition of the property and placing of same to a public use if the condemner shall first deposit with the county judge the amount assessed by the appraisers.~~

Sec. 2. Section 76-720, Reissue Revised Statutes of Nebraska, is amended to read:

76-720. If an appeal is taken from the award of the appraisers by the condemnee and the amount of the final judgment is greater by fifteen percent than the amount of the award, or if appeal is taken by the condemner and the amount of the final judgment is not less than eighty-five percent of the award, or if appeal is taken by both parties and the final judgment is greater in any amount than the award, the court may in its discretion award to the condemnee a reasonable sum for the fees of his or her attorney and for fees necessarily incurred for not more than two expert witnesses. On any appeal by the condemner, the condemner shall pay all court costs on appeal. If appeal is taken by the condemnee only and the final judgment is not equal to or greater than the award of the appraisers, the court may in its discretion award to the condemner the court costs incurred by the condemner, but not attorney or expert witness fees. He or she shall be charged with such costs if the final judgment is not greater than the award of the appraisers.

If an appeal is taken to the district court and the district court finds that the condemner did not negotiate in good faith with the property owner or there was no public purpose for taking the property involved, the court shall award to the condemnee a reasonable sum for the fees of his or her attorney and the condemner shall pay all court costs on appeal.

The changes made to this section by this legislative bill apply to any action pending on the effective date of this section or filed on or after such date.

Sec. 3. Original sections 76-717 and 76-720, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 4. Since an emergency exists, this act takes effect when passed and approved according to law.