

Sixty-sixth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1207

Introduced by

Representatives Zubke, D. Anderson, Guggisberg

Senators Bekkedahl, Kreun

1 A BILL ~~for an Act to amend and reenact section 32-15-32 of the North Dakota Century Code,~~
2 ~~relating to reasonable costs awarded to a defendant.~~ for an Act to amend and reenact section
3 32-15-32 of the North Dakota Century Code, relating to costs awarded to a defendant.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 ~~— **SECTION 1. AMENDMENT.** Section 32-15-32 of the North Dakota Century Code is~~
6 ~~amended and reenacted as follows:~~

7 ~~— **32-15-32. Costs.**~~

8 ~~— The court may in its discretion award to the defendant reasonable actual or statutory costs~~
9 ~~or both, which may include interest from the time of taking except interest on the amount of a~~
10 ~~deposit which is available for withdrawal without prejudice to right of appeal, costs on appeal,~~
11 ~~and reasonable attorney's fees for all judicial proceedings. If the defendant appeals and does~~
12 ~~not prevail, the costs on appeal may be taxed against the defendant. In all cases when a new~~
13 ~~trial has been granted upon the application of the defendant and the defendant has failed upon~~
14 ~~such trial to obtain greater compensation than was allowed the defendant upon the first trial, the~~
15 ~~costs of such new trial shall be taxed against the defendant.~~

16 ~~— 1. If the final judgment or award for compensation and damages in an eminent domain~~
17 ~~proceeding is at least forty percent greater than the last written offer of compensation~~
18 ~~made by the condemnor before the petition is filed, or, in the case of a right of way~~
19 ~~taken for public use, before the condemnor deposits the amount of the offer with the~~
20 ~~court, the court shall award the property owner:~~

21 ~~— a. Reasonable attorney fees;~~

22 ~~— b. Litigation expenses;~~

23 ~~— c. Appraisal fees;~~

24 ~~— d. Expert fees; and~~

- 1 ~~_____ e. Other related costs, compensation, and fees authorized by this chapter.~~
- 2 ~~_____ 2. If the final judgment or award is at least twenty percent, but less than forty percent,~~
- 3 ~~greater than the last written offer before the petition is filed, or, in the case of a right of~~
- 4 ~~way taken for public use, before the condemnor deposits the amount of the offer with~~
- 5 ~~the court, the court may award the property owner the fees, costs, compensation, and~~
- 6 ~~expenses in subsection 1. The final judgment or award of damages must be~~
- 7 ~~determined as of the date of taking.~~
- 8 ~~_____ 3. Attorney fees may not be awarded under this section if the final judgment or award of~~
- 9 ~~compensation and damages does not exceed fifteen thousand dollars.~~
- 10 ~~_____ 4. For purposes of this section, the "final judgment or award for compensation and~~
- 11 ~~damages" does not include an amount for loss unless the amount was included in the~~
- 12 ~~last written offer by the condemning authority.~~
- 13 ~~_____ 5. If the court determines a taking is not for a public use or is unlawful, the court shall~~
- 14 ~~award the property owner reasonable attorney fees and other related expenses, costs,~~
- 15 ~~compensation, and fees authorized by this chapter, regardless of the amount of the~~
- 16 ~~final judgment or award of compensation and damages.~~

17 **SECTION 1. AMENDMENT.** Section 32-15-32 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **32-15-32. Costs.**

20 ~~The court may in its discretion award~~For any judicial proceeding in which the defendant
21 ~~prevails, the court's award~~to the defendant ~~is limited to~~ reasonable actual or statutory costs or
22 both, which may include interest from the time of taking except interest on the amount of a
23 deposit which is available for withdrawal without prejudice to right of appeal, costs on appeal,
24 and reasonable attorney's fees ~~for all judicial proceedings~~. If the defendant appeals and does
25 not prevail, the costs on appeal may be taxed against the defendant. In all cases when a new
26 trial has been granted upon the application of the defendant and the defendant has failed upon
27 such trial to obtain greater compensation than was allowed the defendant upon the first trial, the
28 costs of ~~such~~the new trial ~~shall~~must be taxed against the defendant.