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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH
SESSION

HOUSE FILE No. **1557**

March 12, 2009

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The bill was read for the first time and referred to the Committee on Civil Justice

1.1 A bill for an act
1.2 relating to civil actions; providing time limit for appealing decisions of a
1.3 governing body or board of adjustment to district court; requiring posting of
1.4 a bond for an appeal to Court of Appeals in certain cases; clarifying actions
1.5 involving public participation in government; amending Minnesota Statutes
1.6 2008, sections 462.354, subdivision 2; 462.361, subdivision 1, by adding a
1.7 subdivision; 554.01, subdivision 6; 554.03.

1.8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.9 Section 1. Minnesota Statutes 2008, section 462.354, subdivision 2, is amended to read:

1.10 Subd. 2. **Board of adjustments and appeals.** The governing body of any
1.11 municipality adopting or having in effect a zoning ordinance or an official map shall
1.12 provide by ordinance for a board of adjustments and appeals ~~and adjustments~~. The board
1.13 shall have the powers set forth in section 462.357, subdivision 6 and section 462.359,
1.14 subdivision 4. Except as otherwise provided by charter, the governing body may provide
1.15 alternatively that there be a separate board of adjustments and appeals ~~and adjustments~~
1.16 or that the governing body or the planning commission or a committee of the planning
1.17 commission serve as the board of adjustments and appeals ~~and adjustments~~, and it may
1.18 provide an appropriate name for the board. The board may be given such other duties as
1.19 the governing body may direct.

1.20 In any municipality where the council does not serve as the board, the governing
1.21 body may, except as otherwise provided by charter, provide that the decisions of the
1.22 board on matters within its jurisdiction are final subject to judicial review or are final
1.23 subject to appeal to the council and the right of later judicial review or are advisory to the
1.24 council. Hearings by the board of adjustments and appeals ~~and adjustments~~ shall be held
1.25 within such time and upon such notice to interested parties as is provided in the ordinance

2.1 establishing the board. The board shall within a reasonable time make its order deciding
 2.2 the matter and shall serve a copy of such order upon the appellant or petitioner by mail.
 2.3 Any party may appear at the hearing in person or by agent or attorney. Subject to such
 2.4 limitations as may be imposed by the governing body, the board may adopt rules for the
 2.5 conduct of proceedings before it. Such rules may include provisions for the giving of oaths
 2.6 to witnesses and the filing of written briefs by the parties. The board shall provide for a
 2.7 record of its proceedings which shall include the minutes of its meetings, its findings, and
 2.8 the action taken on each matter heard by it, including the final order. In any municipality in
 2.9 which the planning agency does not act as the board of adjustments and appeals, the board
 2.10 shall make no decision on an appeal or petition until the planning agency, if there is one,
 2.11 or a representative authorized by it has had reasonable opportunity, not to exceed 60 days,
 2.12 to review and report to the board of adjustments and appeals upon the appeal or petition.

2.13 Sec. 2. Minnesota Statutes 2008, section 462.361, subdivision 1, is amended to read:

2.14 Subdivision 1. **Review of action.** ~~Any~~ A person aggrieved by an ordinance, rule,
 2.15 regulation, decision or order of a governing body or board of adjustments and appeals
 2.16 acting ~~pursuant to~~ under sections 462.351 to 462.364 may have ~~such~~ the ordinance, rule,
 2.17 regulation, decision, or order, reviewed by ~~an appropriate remedy in~~ the district court,
 2.18 subject to ~~the provisions of~~ this section. The appeal must be filed with the district court
 2.19 within 60 days of the final decision of the governing body or board of adjustments and
 2.20 appeals.

2.21 **EFFECTIVE DATE; APPLICATION.** This section applies to a final decision
 2.22 made before, on, or after the effective date of this act. If a final decision was made before
 2.23 the effective date, an appeal must be filed within 60 days of the effective date.

2.24 Sec. 3. Minnesota Statutes 2008, section 462.361, is amended by adding a subdivision
 2.25 to read:

2.26 **Subd. 3. Posting bond upon appeal.** (a) For purposes of this subdivision,
 2.27 "approval" means the approval by the governing body or board of adjustments and appeals
 2.28 of a rezoning, conditional use permit, variance, planned unit development, preliminary or
 2.29 final plat, site plan, or similar zoning or subdivision-type approval.

2.30 (b) A party who does not prevail in a district court action under this section
 2.31 challenging an approval of a board of adjustments and appeals or a governing body must,
 2.32 as a condition of an appeal of the district court decision, post a bond with, and in an
 2.33 amount approved by, the district court as security for the costs of the appeal and the
 2.34 damages that may be sustained in consequence of the appeal by the party who obtained the

3.1 approval, and the obedience to and satisfaction of the order or judgment that the appellate
3.2 court may give if the order or judgment, or any part of it, is affirmed or the appeal is
3.3 dismissed. After a final decision by the Court of Appeals or Supreme Court, a motion may
3.4 be made to the district court for disposition of the bond.

3.5 Sec. 4. Minnesota Statutes 2008, section 554.01, subdivision 6, is amended to read:

3.6 Subd. 6. **Public participation.** "Public participation" means speech or lawful
3.7 conduct that is genuinely aimed in whole or in part at procuring favorable government
3.8 action. Public participation does not include a court action, claim, or pleading seeking
3.9 reversal or modification of government action.

3.10 Sec. 5. Minnesota Statutes 2008, section 554.03, is amended to read:

3.11 **554.03 IMMUNITY.**

3.12 ~~Lawful conduct or speech~~ Public participation that is genuinely aimed in whole or in
3.13 part at procuring favorable government action is immune from liability, unless the conduct
3.14 or speech constitutes a tort or a violation of a person's constitutional rights.