

CHAPTER 234†

CONDEMNATION OF UTILITIES

H. F. 31

AN ACT relating to the condemnation of existing utility facilities by cities and towns.

Be It Enacted by the General Assembly of the State of Iowa:

1 SECTION 1. Chapter four hundred seventy-two (472), Code 1971,
2 is amended by adding sections two (2) through seven (7), inclusive.

1 SEC. 2. **Special condemnation proceedings—limitation.** When any
2 city or town has voted at an election to purchase, establish, erect,
3 maintain, and operate heating plants, waterworks, gasworks, or
4 electric light or power plants, or when it has voted to contract an
5 indebtedness and issue bonds for such purposes, and in such city or
6 town there exists any such utility, or incomplete parts thereof or more
7 than one, not publicly owned, and the contract or franchise of the
8 owner of the utility has expired or been surrendered, and the owner
9 and the city or town cannot agree upon terms of purchase, it may, by
10 resolution, proceed to acquire by condemnation any one or more of the
11 utilities or incomplete parts thereof. When so acquired it may apply
12 the proceeds of the bonds in payment therefor and in making exten-
13 sions and improvements to such works or plants so acquired, but not
14 more than one utility may be so acquired when the municipality is
15 indebted in excess of the statutory limitation of indebtedness for such
16 purposes for any such acquired property.

1 SEC. 3. **Court of condemnation.** Upon the passage of the resolu-
2 tion as provided in section two (2) of this Act and the presentation
3 of a certified copy thereof to the supreme court while in session,
4 or to the chief justice of the supreme court, the court or chief justice
5 shall within five days appoint as a court of condemnation three district
6 court judges from three judicial districts, one of whom shall be from
7 the district in which the city or town is located, if not a resident of the
8 city or town, and shall enter an order requiring the judges to attend
9 as such court of condemnation at the county seat of the county in
10 which the city or town is located within ten days. The district court
11 judges shall attend and constitute a court of condemnation.

1 SEC. 4. **Procedure.** Said court when it meets to organize or at any
2 time during the proceedings, which may be adjourned from time to
3 time for any purpose, may fix the time for the appearance of any per-
4 son that any party desires to have joined in the proceedings, and whom
5 the court deems necessary. The time for appearance shall be suffi-
6 ciently remote to serve notice upon the parties, but if the time for
7 appearance occurs after the proceedings are begun, the proceedings
8 may be reviewed by the court to give all parties a full opportunity
9 to be heard.

1 SEC. 5. **Notice—service.** Persons not voluntarily appearing, but
2 having any right, title, or interest in or to the property which is the
3 subject of condemnation, or any part thereof, including all lease-
4 holders, mortgagees and trustees of bondholders, who are to be made
5 parties to the proceedings shall be served with notice of the proceedings
6 and the time and place of meeting of the court in the same manner

†See Editor's note, page iii.

7 and for the same length of time as for the service of original notice,
 8 either by personal service, or by service by publication, the time so set
 9 being the time at which the parties so served are required to appear,
 10 and actual personal service of the notice within or without the state
 11 shall supersede the necessity for publication.

1 **SEC. 6. Powers of court—duty of clerk—vacancy.** The court of
 2 condemnation shall have power to summon and swear witnesses, take
 3 evidence, order the taking of depositions, require the production of
 4 any books or papers, and may appoint a shorthand reporter. It shall
 5 perform all the duties of commissioners in the condemnation of prop-
 6 erty. The duties and the method of procedure and condemnation, in-
 7 cluding provisions for appeal shall be except as otherwise specifically
 8 provided, as provided for the taking of private property for works of
 9 internal improvement. The clerk of the district court of the county
 10 where the city or town is located shall perform all of the duties re-
 11 quired of the sheriff in the condemnation; and in case of a vacancy
 12 in the court, the vacancy shall be filled in the manner in which the
 13 original appointment was made. When necessary by reason of a
 14 vacancy, the court may review any evidence in its record.

1 **SEC. 7. Costs—expenses.** The costs of the proceedings shall be
 2 the same and paid in the same manner as in proceedings in the district
 3 court, and the district court judges of the court of condemnation shall
 4 receive, while engaged in such service, their actual expenses, which
 5 expenses shall be taxed as costs in the case.

1 **SEC. 8.** Section three hundred eighty-six B point two (386B.2),
 2 unnumbered paragraph two (2), Code 1971, is amended as follows:
 3 Any municipal corporation shall have the right of eminent domain
 4 to acquire private property necessary in connection with the establish-
 5 ment or acquisition, enlargement, extension, improvement, operation
 6 and maintenance of a transit system. In the event of the exercise of
 7 eminent domain to acquire an existing transit system, the provisions
 8 of section one (1) of this Act shall govern so far as applicable.

1 **SEC. 9.** Sections three hundred ninety-seven point twenty (397.20),
 2 three hundred ninety-seven point twenty-one (397.21), three hundred
 3 ninety-seven point twenty-two (397.22), three hundred ninety-seven
 4 point twenty-three (397.23), three hundred ninety-seven point twenty-
 5 four (397.24), and three hundred ninety-seven point twenty-five
 6 (397.25), Code 1971, are repealed.

Approved April 1, 1971.

CHAPTER 235

SUBSEQUENT DAMAGES UNDER EMINENT DOMAIN

H. F. 29

AN ACT relating to the payment of subsequent damages to property owners.

Be It Enacted by the General Assembly of the State of Iowa:

1 **SECTION 1.** Chapter four hundred seventy-two (472), Code 1971,
 2 is amended by adding the following new section: