

Judiciary and Law Enforcement: Paulin, Chair; Corey and Halvorson of Clayton.

20. Pass 3/22 (p. 1229)

REC'D MAR 18 1984

SENATE FILE 441

BY COMMITTEE ON JUDICIARY
Approved 3/16 (p. 783)

Passed Senate, Date 3-24-83 (p. 932) Passed House, Date 3-27-84 (p. 1345)

Vote: Ayes 40 Nays 5 Vote: Ayes 94 Nays 3

Approved April 11, 1984 (p. 1493)

A BILL FOR

1 An Act relating to eminent domain procedures by providing
 2 constructive notice to possible purchasers that land is
 3 subject to condemnation proceedings, clarifying respon-
 4 sibilities for recording condemnation proceedings, and
 5 specifying the time at which title to property or an
 6 interest in property passes following condemnation.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 472.3, subsection 1, Code 1983, is
2 amended to read as follows:

3 1. A description of all the property in the county,
4 affected or sought to be condemned, by its congressional
5 numbers, in tracts not exceeding one-sixteenth of a section,
6 or, if the land consists of lots ~~in-a-city~~, by the numbers
7 of the lot and block, and plat designation.

8 Sec. 2. Section 472.3, Code 1983, is amended by adding
9 the following new subsection:

10 NEW SUBSECTION. 7. The applicant shall promptly certify
11 that its application for condemnation has been approved by
12 the chief judge and shall file the original approved
13 application with the county recorder in the manner required
14 under section 472.37. The county recorder shall file and
15 index the application in the record of deeds and preserve
16 the application as required by sections 472.38 and 558.55.
17 The filing and indexing constitute constructive notice to
18 all parties that a proceeding to condemn the property is
19 pending and that the applicant has the right to acquire the
20 property from all owners, lienholders, and encumbrancers whose
21 interests are of record at the time of the filing. When
22 indexed, the proceeding is considered pending so as to charge
23 all persons not having an interest in the property with notice
24 of its pendency, and while pending no interest can be acquired
25 by the third parties in the property against the rights of
26 the applicant. If the appraisal of damages is not made
27 within one hundred twenty days, the proceedings instituted
28 under this section are terminated and all rights and interests
29 of the applicant arising out of the application for
30 condemnation terminate. The applicant may reinstitute a new
31 condemnation proceeding at any time. The reinstated
32 proceedings are entirely new proceedings and not a revival
33 of the terminated proceeding.

34 Sec. 3. Section 472.20, Code 1983, is amended to read
35 as follows:

1 472.20 SHERIFF TO FILE CERTIFIED COPY. The When an appeal
 2 is taken, the sheriff,~~when an appeal is taken,~~ shall at once
 3 file with the clerk of the district court a certified copy
 4 of ~~so~~ as much of the assessment as applies to the part appealed
 5 from for which the appeal is taken. ~~In case of such appeal~~
 6 ~~the sheriff shall, as soon as all other unappealed assessments~~
 7 ~~are disposed of, file with the clerk all papers pertaining~~
 8 ~~to the proceedings and remaining in his hands.~~

9 Sec. 4. Section 472.25, Code 1983, is amended to read
 10 as follows:

11 472.25 RIGHT TO TAKE POSSESSION OF LANDS. Upon the filing
 12 of the commissioners' report with the sheriff, the applicant
 13 may deposit with the sheriff the amount assessed in favor
 14 of a claimant, and ~~thereupon~~ the applicant shall, except as
 15 otherwise provided, ~~have the right to~~ may take possession
 16 of the land condemned and proceed with the improvement. No
 17 An appeal from ~~said~~ the assessment shall does not affect such
 18 the right, except as otherwise provided. Upon appeal from
 19 the commissioners' award of damages the district court,~~wherein~~
 20 ~~said appeal is pending,~~ may direct that such the part of the
 21 amount of damages deposited with the sheriff, as it finds
 22 just and proper, be paid to ~~persons entitled thereto~~ the
 23 claimant. If upon trial of ~~said~~ the appeal a lesser amount
 24 is awarded the difference between the amount so awarded and
 25 the amount paid ~~as above provided~~ shall be repaid by the
 26 person ~~or persons~~ to whom ~~the same~~ it was paid and upon failure
 27 to make such the repayment the party ~~entitled thereto~~ shall
 28 have judgment entered against the person ~~or persons~~ who
 29 received such the excess payment. Title to the property or
 30 the interests in property passes to the applicant when damages
 31 have been finally determined and paid.

32 Sec. 5. Section 472.35, Code 1983, is amended to read
 33 as follows:

34 472.35 SHERIFF TO FILE RECORD. ~~The sheriff, in case no~~
 35 ~~appeal is taken, shall, immediately after the final~~

1 ~~determination-of-condemnation-proceedings,-and-after-the~~
2 ~~acquiring-of-the-property-by-the-condemner,~~ Thirty days after
3 the date of mailing the notice of appraisal of damages,
4 the sheriff shall file, with the county recorder of the county
5 in which the condemned land is situated, the following papers:

6 1. The A certified copy of the application for
7 condemnation.

8 2. All notices, together with all returns of service
9 ~~endorsed thereon~~ on the returns or attached ~~thereto~~ to the
10 returns.

11 3. The report of the commissioners.

12 4. All other papers filed with the sheriff in said the
13 proceedings.

14 5. A written statement by the sheriff of all money received
15 in payment of damages, from whom received, to whom paid, and
16 the amount paid to each claimant and reference to the ap-
17 plication for condemnation by book and page or instrument
18 number and the date the application was filed with the county
19 recorder.

20 Sec. 6. Section 472.36, Code 1983, is amended to read
21 as follows:

22 472.36 CLERK TO FILE RECORD. The clerk of the district
23 court, in case an appeal is taken in condemnation proceedings,
24 shall file with the county recorder ~~the records which the~~
25 ~~sheriff is required to file in case no appeal is taken,-and~~
26 ~~in addition thereto the following:~~

27 1. A copy of the ~~record~~ final judgment entry of the court
28 showing the amount of damages determined on appeal.

29 2. A written statement by the clerk of all money received
30 by ~~him~~ the clerk in payment of damages, from whom received,
31 to whom paid, and the amount paid to each claimant.

32 3. A copy of the description of the property condemned
33 and the interest acquired in the property.

34 EXPLANATION

35 The bill amends the eminent domain provisions to provide

1 for the recording of an application for condemnation which
2 is to serve as notice that the procedure is pending on the
3 property. Current law is silent as to when title to prop-
4 erty passes following condemnation. The bill provides that
5 title to property or an interest in property passes when
6 damages are finally determined and paid. The bill takes
7 effect. July 1 following enactment.

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SENATE FILE 441

AN ACT

RELATING TO EMINENT DOMAIN PROCEDURES BY PROVIDING CONSTRUCTIVE NOTICE TO POSSIBLE PURCHASERS THAT LAND IS SUBJECT TO CONDEMNATION PROCEEDINGS, CLARIFYING RESPONSIBILITIES FOR RECORDING CONDEMNATION PROCEEDINGS, AND SPECIFYING THE TIME AT WHICH TITLE TO PROPERTY OR AN INTEREST IN PROPERTY PASSES FOLLOWING CONDEMNATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 472.3, subsection 1, Code 1983, is amended to read as follows:

1. A description of all the property in the county, affected or sought to be condemned, by its congressional numbers, in tracts not exceeding one-sixteenth of a section, or, if the land consists of lots ~~in-a-city~~, by the numbers of the lot and block, and plat designation.

Sec. 2. Section 472.3, Code 1983, is amended by adding the following new subsection:

NEW SUBSECTION. 7. The applicant shall promptly certify that its application for condemnation has been approved by the chief judge and shall file the original approved application with the county recorder in the manner required under section 472.37. The county recorder shall file and index the application in the record of deeds and preserve the application as required by sections 472.38 and 558.55. The filing and indexing constitute constructive notice to all parties that a proceeding to condemn the property is pending and that the applicant has the right to acquire the property from all owners, lienholders, and encumbrancers whose interests are of record at the time of the filing. When indexed, the proceeding is considered pending so as to charge all persons not having an interest in the property with notice of its pendency, and while pending no interest can be acquired

by the third parties in the property against the rights of the applicant. If the appraisal of damages is not made within one hundred twenty days, the proceedings instituted under this section are terminated and all rights and interests of the applicant arising out of the application for condemnation terminate. The applicant may reinstitute a new condemnation proceeding at any time. The reinstated proceedings are entirely new proceedings and not a revival of the terminated proceeding.

Sec. 3. Section 472.20, Code 1983, is amended to read as follows:

472.20 SHERIFF TO FILE CERTIFIED COPY. ~~The~~ When an appeal is taken, the sheriff, when an appeal is taken, shall at once file with the clerk of the district court a certified copy of ~~so~~ as much of the assessment as applies to the part appealed from for which the appeal is taken. ~~in case of such appeal the sheriff shall, as soon as all other unappealed assessments are disposed of, file with the clerk all papers pertaining to the proceedings and remaining in his hands.~~

Sec. 4. Section 472.25, Code 1983, is amended to read as follows:

472.25 RIGHT TO TAKE POSSESSION OF LANDS. Upon the filing of the commissioners' report with the sheriff, the applicant may deposit with the sheriff the amount assessed in favor of a claimant, and ~~thereupon~~ the applicant ~~shall~~, except as otherwise provided, ~~have the right to~~ may take possession of the land condemned and proceed with the improvement. ~~No~~ An appeal from ~~said~~ the assessment ~~shall does not~~ does not affect ~~such~~ the right, except as otherwise provided. Upon appeal from the commissioners' award of damages the district court, ~~wherein~~ said appeal is pending, may direct that ~~such~~ the part of the amount of damages deposited with the sheriff, as it finds just and proper, be paid to ~~persons entitled thereto~~ the claimant. If upon trial of ~~said~~ the appeal a lesser amount is awarded the difference between the amount so awarded and the amount paid ~~as above provided~~ shall be repaid by the

person ~~or persons~~ to whom ~~the same~~ it was paid and upon failure to make ~~such~~ the repayment the party ~~entitled thereto~~ shall have judgment entered against the person ~~or persons~~ who received ~~such~~ the excess payment. Title to the property or the interests in property passes to the applicant when damages have been finally determined and paid.

Sec. 5. Section 472.35, Code 1983, is amended to read as follows:

~~472.35 SHERIFF TO FILE RECORD. The sheriff, in case no appeal is taken, shall, immediately after the final determination of condemnation proceedings, and after the acquiring of the property by the condemnor, Thirty days after the date of mailing the notice of appraisal of damages, the sheriff shall file, with the county recorder of the county in which the condemned land is situated, the following papers:~~

1. The A certified copy of the application for condemnation.
2. All notices, together with all returns of service endorsed ~~thereon on the returns~~ or attached ~~thereto to the returns.~~
3. The report of the commissioners.
4. All other papers filed with the sheriff in said the proceedings.
5. A written statement by the sheriff of all money received in payment of damages, from whom received, to whom paid, and the amount paid to each claimant and reference to the application for condemnation by book and page or instrument number and the date the application was filed with the county recorder.

Sec. 6. Section 472.36, Code 1983, is amended to read as follows:

~~472.36 CLERK TO FILE RECORD. The clerk of the district court, in case an appeal is taken in condemnation proceedings, shall file with the county recorder the records which the sheriff is required to file in case no appeal is taken, and in addition thereto the following:~~

1. A copy of the ~~record~~ final judgment entry of the court showing the amount of damages determined on appeal.
2. A written statement by the clerk of all money received by ~~him~~ the clerk in payment of damages, from whom received, to whom paid, and the amount paid to each claimant.
3. A copy of the description of the property condemned and the interest acquired in the property.

ROBERT T. ANDERSON
President of the Senate

DONALD D. AVENSON
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 441, Seventieth General Assembly.

K. MARIE THAYER
Secretary of the Senate

Approved April 11, 1984

TERRY R. BRANSTAD
Governor