

EMINENT DOMAIN STUDY COMMITTEE

Report to the Legislative Council  
and the Members of the  
First Session of the Sixty-sixth General Assembly  
State of Iowa  
1975

F I N A L   R E P O R T  
EMINENT DOMAIN STUDY COMMITTEE

Senate Concurrent Resolution 135, introduced during the Second Session of the Sixty-fifth General Assembly, requested that the Legislative Council establish an interim study committee to conduct a study during the 1974 interim of the eminent domain procedures provided by law. At its meeting on May 20, 1974, the Studies Committee of the Legislative Council recommended that this study be conducted by a special interim study committee. The Legislative Council approved this recommendation on May 21, 1974.

The following members of the Senate and the House of Representatives were appointed as members of the Study Committee by the Legislative Council:

Senator Hilarius L. Heying  
Senator W. R. Rabedeaux  
Senator Ray Taylor  
Representative Donald D. Avenson  
Representative Horace Daggett  
Representative Edgar H. Holden  
Representative Rollin Howell

The Eminent Domain Study Committee held its organizational meeting on July 11, 1974 at which time Representative Edgar H. Holden was elected permanent Chairman and Senator Ray Taylor was elected Vice Chairman. The Study Committee reviewed Senate Concurrent Resolution 135 and agreed that the work during the interim should be concentrated on the following three issues:

1. Review of the present condemnation procedures outlined in Chapter 472 of the Code and the need for revision following the experiences of the state agencies since the last revision of this Chapter in 1970 and 1971.

2. Review the present law relative to the disposal of unused right-of-way acquired by purchase or the eminent domain procedures of Chapter 472.

3. Consider alternatives to the present practices of acquiring long-term easements by public utilities and pipeline companies, such as requiring rental payments to the landowners of property through which pipelines and power lines are constructed.

At the July meeting, representatives of the Iowa State Commerce Commission and the State Highway Commission appeared to testify concerning their experiences with the laws enacted by the General Assembly in 1970 and 1971. The representatives of the Iowa State Commerce Commission conceded that the new informational

meetings provisions in the public utilities law are working very well. Representatives of the State Highway Commission agreed that the changes made in the eminent domain procedures in Chapter 472 of the Code have worked well and submitted recommendations to the Study Committee which they feel will further improve the law.

The Study Committee subsequently held meetings on August 8 and August 28 to receive testimony from representatives of Dome Pipeline and the landowners affected by the Dome Pipeline project. The Dome Pipeline representatives recounted their experiences with and reactions to Iowa's utility easement acquisition procedures and explained their proposed compensation and construction procedures. The landowners expressed their concern relative to potential damage to drain titles, crops, and future productivity of the land through which the pipeline will be constructed. Landowners also recommended changes in the procedural requirements for granting the power of eminent domain to a pipeline company.

At meetings held September 17 and October 10, the Study Committee received testimony from representatives of the Iowa State Commerce Commission and utility companies. The Iowa State Commerce Commission related the procedures and criteria required for the granting of permits and the power of eminent domain for pipelines and electric transmission lines. Utility representatives stated that terminable easements would detrimentally affect the ability of companies to raise capital and that rental payments would create an administrative burden and possibly constitute an unconstitutional burden on interstate commerce. Utility representatives explained that considerations of safety, cost, and construction problems frequently prevent the use of public rights-of-way or the following of property lines.

The Study Committee met November 7, 1974 and December 3, 1974 to consider legislative proposals. The Study Committee recommended proposals in six areas.

#### 1. EMINENT DOMAIN PROCEDURES

The Study Committee addressed itself to several of the procedural problems encountered by state agencies and recommends a bill draft encompassing the subject matter of H.F. 672 and H.F. 1353 introduced in the Sixty-fifth General Assembly. The bill draft includes the following provisions:

a. Increase the list of eligible commissioners to forty, allow the chief judge to select from the list of an adjacent county if the list is exhausted, and allow the sheriff to proceed with five commissioners if one fails to appear at the hearing.

b. Allow any public agency condemning property to take possession one hundred and eighty days after the filing of the award if a dwelling house is taken.

c. Allow a condemnor to construct a dam, but not impound water until the issue of damages is resolved, if a dwelling house would be overflowed.

d. Replace a well if taken for highway purposes.

e. Allow hand delivery of the appraisal to the owner whose land is taken for street or road purposes.

f. Require the owner, after notice of assessment, to give notice of the pendency of condemnation to anyone subsequently acquiring an interest in the property and prevent notice from being voided by the subsequent transfer of an interest.

A copy of the bill draft is attached and by this reference made a part of the final report (Bill I).

## 2. TRANSMISSION LINE ROUTING

The Study Committee recommends that the priorities of alternative transmission line routes be established by statute. The priorities recommended by the Study Committee would be in the following order: first, within public rights-of-way where economical, practical, and reasonable; second, on private property but near and parallel to public rights-of-way or property division lines; and third, across private property.

Although the Study Committee considered requiring utility corridors, it rejected this option as costly and impractical. However, the Study Committee does believe that a greater effort should be made to avoid routing transmission lines across private property. To assist this objective, the Study Committee also recommends eliminating the prohibition against constructing a transmission line within one hundred feet of an uninhabited building without the owner's agreement.

A copy of the bill draft is attached and by this reference made a part of the final report (Bill II).

## 3. INFORMATIONAL MEETING REQUIREMENTS

The Study Committee recommends that an informational meeting should not be void if through inadvertence a landowner may not have received personal notice of the meeting. The Study Committee's recommendation asserts that if the Iowa State Commerce Commission finds that a good faith effort was made to give notice to all landowners, or that a landowner has been given a copy of the information provided at the informational meeting, then the informational meeting process will not have to be repeated.

In another effort to reduce repetition of informational meetings, the Study Committee recommends allowing pipeline companies to apply to the Iowa State Commerce Commission to examine and survey the land prior to the informational meeting. Allowing the pipeline company to ascertain soil conditions prior to the

informational meeting should, the Study Committee believes, reduce the necessity for subsequent route changes which could require an additional informational meeting. Presently, electric utilities can file a petition with the Iowa State Commerce Commission for authority to survey and examine the proposed routes for transmission lines.

A copy of the bill draft is attached and by this reference made a part of the final report (Bill III).

#### 4. RENEGOTIATION OF EASEMENTS

The Study Committee recommends that the owner of an easement acquired where eminent domain is available should be required to renegotiate the easement payment every twenty years. This supplemental payment would be proportional to the change in the appraised valuation of the tract containing the easement. Only land which is and continues to be used for the cultivation of crops would qualify for the supplemental payment.

The Study Committee made this recommendation after receiving extensive testimony from owners of agricultural land who complained that they are not being adequately compensated for the damage done to drain tile systems and for restrictions imposed upon the property which may restrict its use in the future. The Study Committee adopted this recommendation instead of the proposal for supplemental annual rental payments which the Study Committee rejected as administratively burdensome and likely to result in excess compensation.

A copy of the bill draft is attached and by this reference made a part of the final report (Bill IV).

#### 5. SALE OF UNUSED OR SURPLUS LAND

The Study Committee recommends that if land is acquired where eminent domain is available and is not used within five years, the original owner should be granted an option to repurchase the unused land at the acquisition price. If the land is not used within five years of acquisition, the burden is on the present owner to show that the land will be used. The recommendation would be enforced by an action for damages only.

The Study Committee decided that the original landowner should have the first opportunity to reacquire his land if not used for the project and that he should be able to purchase the land at the price at which he surrendered it.

A copy of the bill draft is attached and by this reference made a part of the final report (Bill V).

#### 6. INFORMATION PROVIDED TO LANDOWNERS

The Study Committee recommends that a utility planning a baseline must inform the landowner prior to any negotiation for an

easement that all terms are negotiable, specifically including the depth of the pipeline, the degree of responsibility for the pipeline assumed by the property owner, and the method of payment. The Study Committee believes that landowners should be made fully aware of rights in negotiating pipeline easements.

A copy of the bill draft is attached and by this reference made a part of the final report (Bill VI).

Bill I

PREPARED FOR THE EMINENT DOMAIN  
STUDY COMMITTEE BY THE LEGISLATIVE  
SERVICE BUREAU FOR DISCUSSION  
PURPOSES ONLY.

December, 1974

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to eminent domain procedures.

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

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1 Section 1. Section four hundred seventy-two point four  
2 (472.4), unnumbered paragraph one (1), Code 1975, is amended  
3 to read as follows:

4 Annually the board of supervisors of a county shall appoint  
5 not less than ~~twenty-eight~~ forty residents of the county and  
6 the names of such persons shall be placed on a list and they  
7 shall be eligible to serve as members of a compensation  
8 commission. ~~One-fourth-of-the~~ The persons appointed shall  
9 be owner-operators of agricultural property, ~~one-fourth-of~~  
10 ~~the-persons-appointed-shall-be~~ owners of city or town property,  
11 ~~one-fourth-shall-be~~ licensed real estate salesmen or real  
12 estate brokers, and ~~one-fourth-shall-be~~ persons having  
13 knowledge of property values in the county by reason of their  
14 occupation, such as bankers, auctioneers, property managers,  
15 property appraisers, and persons responsible for making loans  
16 on property.

17 Sec. 2. Section four hundred seventy-two point five  
18 (472.5), Code 1975, is amended to read as follows:

19 472.5 VACANCIES. In case any appointee under section  
20 472.4 fails to act, the chief judge of the judicial district  
21 shall appoint another person from the list, ~~possessing-the~~  
22 ~~same-qualifications-as-the-person-who-is-being-replaced~~ to  
23 complete the membership of the commission. If the list for  
24 the county is exhausted, the chief judge shall appoint another  
25 person from the list from any adjacent county.

26 If on the date of the hearing, one of the chief judge's  
27 appointees fails to appear at the hearing, the sheriff may  
28 either appoint any person not having an interest in the  
29 property to serve on the commission or may direct the five  
30 commissioners present to proceed to assess damages to all  
31 property to be taken.

32 Sec. 3. Section four hundred seventy-two point twenty-  
33 six (472.26), Code 1975, is amended to read as follows:

34 472.26 DISPOSSESSION OF OWNER. A landowner shall not  
35 be dispossessed under condemnation proceedings, of his

1 residence, or dwelling house, ~~outhouse, orchard, or garden,~~  
 2 until the damages thereto have been finally determined and  
 3 paid. However, if ~~the property described in this section~~  
 4 ~~is condemned for highway purposes by the state department~~  
 5 ~~of transportation~~ such damages are payable from public funds,  
 6 the condemning authority may take possession of the property  
 7 either after the damages have been finally determined and  
 8 paid or one hundred eighty days after the compensation  
 9 commission has determined and filed its award, in which event  
 10 all of the appraisement of damages shall be paid to the  
 11 property owner before the dispossession can take place. This  
 12 section shall not apply to condemnation proceedings for  
 13 drainage or levee improvements, or for public school purposes.

14 Sec. 4. Section four hundred seventy-two point twenty-  
 15 seven (472.27), Code 1975, is amended to read as follows:

16 472.27 ERECTION OF DAM--LIMITATION. If it appears from  
 17 the finding of the commissioners that the dwelling house,  
 18 ~~outhouse, orchard, or garden~~ of the owner of any land taken  
 19 will be overflowed ~~or otherwise injuriously affected~~ by any  
 20 dam or reservoir to be constructed as authorized by this  
 21 chapter, such dam shall not be erected impound the water until  
 22 the damages have been finally determined and paid regarding  
 23 the question of such overflowing ~~or other injury has been~~  
 24 ~~determined in favor of the corporation upon appeal.~~

25 Sec. 5. Section four hundred seventy-two point forty-four  
 26 (472.44), Code 1975, is amended to read as follows:

27 472.44 TAKING PROPERTY FOR HIGHWAY--BUILDINGS AND FENCES  
 28 MOVED. When real property or an interest therein is purchased  
 29 or condemned for highway purposes and a fence, well, or  
 30 building is located on such property, the governmental agency  
 31 shall be responsible for all costs incurred by the property  
 32 owner in replacing or moving the fence or replacing a well  
 33 of at least equal capacity or moving the building onto property  
 34 owned by the landowner and abutting the property purchased  
 35 or condemned for highway purposes, or the governmental agency

1 may replace or move the fence or move the building. Such  
2 costs shall not constitute an additional element of damages  
3 which would permit unjust enrichment or a duplication of  
4 payments to any condemnee.

5 Sec. 6. Section four hundred seventy-two point forty-five  
6 (472.45), Code 1975, is amended to read as follows:

7 472.45 CONDEMNATION FOR ROAD OR STREET--~~MAILING~~ COPY OF  
8 APPRAISAL. When any real property or interest therein is  
9 to be purchased, or in lieu thereof to be condemned for  
10 highway, street or road purposes, the purchasing state agency,  
11 county, city or town or their agent shall submit to the person,  
12 corporation or entity whose property or interest therein is  
13 to be taken, ~~by ordinary mail, at least ten days prior to~~  
14 ~~the date of contract,~~ a copy of the appraisal upon such real  
15 property or interest therein which shall include, at least,  
16 an itemization of the appraised value of the real property  
17 or interest therein, any buildings thereon, all other  
18 improvements including fences, severance damages and loss  
19 of access. No person, corporation, or entity shall be asked  
20 or required to sign any acquisition agreement, contract,  
21 option, release form, grant, deed, easement or request for  
22 condemnation until at least ten days after the appraisal is  
23 mailed or delivered.

24 Sec. 7. Chapter four hundred seventy-two (472), Code 1975,  
25 is amended by adding the following new section:

26 NEW SECTION. No condemnation proceedings shall be void  
27 for failure to serve notice of assessment upon a new owner  
28 or any person interested in the land if such new ownership  
29 or interest arose subsequent to the service of the notice  
30 of assessment, upon the original owner of the land being  
31 condemned and such original owner shall notify any such new  
32 owner or interest holder of the pendency of such condemnation  
33 proceeding.

34 EXPLANATION

35 Section 1 increases the total number of persons placed

1 on the list of compensation commissioners and will enable  
2 a county board of supervisors to appoint a complete list of  
3 such persons.

4 Section 2 enables the chief judge of the judicial district  
5 to complete the appointment of a full compensation commission  
6 from the list of qualified persons of an adjacent county and  
7 enables the sheriff to appoint a disinterested person to serve  
8 where a compensation commissioner appointed by the chief judge  
9 fails to appear or to proceed with five commissioners present.

10 Section 3 strikes references to outhouses and domestic  
11 orchards and gardens which are antiquities of the law and  
12 provides that a landowner may be dispossessed of his property  
13 when the damages are determined and paid.

14 Section 4 permits a dam to be constructed prior to  
15 settlement of damages but prohibits the impoundment of water  
16 until the issue of damages has been resolved.

17 Section 5 adds wells as an item that may be compensated  
18 for by payment to the property owners of the actual cost of  
19 replacing the well.

20 Section 6 enables the acquiring authority to submit the  
21 required appraisal at the first personal contact with the  
22 property owner and would provide the owner with ten days after  
23 such mailing or delivery during which to consider the  
24 appraisal. The current mailing requirement creates anxiety  
25 and confusion in that no personal contact can be made to  
26 explain either the acquisition process or the appraisal  
27 submitted until the expiration of the ten-day waiting period.

28 Section 7 of this bill will enable the convening of a valid  
29 condemnation proceeding. This would prevent subsequent  
30 nuisance and bad faith conveyances designed to frustrate the  
31 initiation of a valid condemnation proceeding.

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LSB 114  
bk/rh/31

Prepared for the Eminent Domain  
Study Committee by the  
Legislative Service Bureau  
December, 1974

Bill II

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act relating to the routing of transmission lines.  
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section four hundred eighty-nine point eighteen  
2 (489.18), Code 1975, is amended to read as follows:

3 489.18 SUPERVISION OF CONSTRUCTION--LOCATION. The state  
4 commerce commission shall have power of supervision over the  
5 construction of said transmission line and over its future  
6 operation and maintenance. ~~Said-transmission-line-shall-be~~  
7 ~~constructed-near-and-parallel-to-the-right-of-way-of-the~~  
8 ~~railways-of~~ The transmission line shall be constructed over,  
9 under, along, through or across public lands and highways  
10 wherever the same is practicable and reasonable unless the  
11 commission determines that a more economical location on  
12 private lands is available or that a location on a highway  
13 will interfere with the use of the highway by the public.  
14 The commission shall require such supporting structures and  
15 locations on the highway as is practicable and reasonable  
16 to prevent interference with the use of the highway by the  
17 public. If the commission determines that the construction  
18 of a transmission line along the highway is not the most  
19 economical or interferes with the use of the highway by the  
20 public, the transmission line may be constructed on private  
21 lands provided such construction shall be near and parallel  
22 to the right-of-way of a railway or highway of the state or  
23 along the division lines of the lands, according to the  
24 government survey thereof, wherever the same is practicable  
25 and reasonable, and so as not to interfere with the use by  
26 the public of the highways or streams of the state, nor  
27 unnecessarily interfere with the use of any lands by the  
28 occupant thereof.

29 Sec. 2. Section four hundred eighty-nine point twenty  
30 (489.20), Code 1975, is amended to read as follows:

31 489.20 DISTANCE FROM BUILDINGS. No transmission line shall  
32 be constructed, except by agreement, within one hundred feet  
33 of any dwelling house ~~or-other-building~~, except where said  
34 line crosses or passes along a public highway or is located  
35 alongside or parallel with the right of way of any railway

1 company. In addition to the foregoing, each person, company,  
2 or corporation shall conform to any other rules, regulations,  
3 or specifications established by the state commerce commission,  
4 in the construction, operation, or maintenance of such lines.

5 EXPLANATION

6 The bill requires the Iowa State Commerce Commission to  
7 route transmission lines within or near and parallel public  
8 rights-of-way and property division lines whenever reasonable  
9 and practicable. The bill also allows transmission lines to  
10 be constructed within one hundred feet of uninhabited buildings  
11 without requiring agreement by the owner.

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Prepared for the Eminent  
Domain Study Committee  
By the Legislative Service  
Bureau  
December, 1974  
Bill III

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act relating to requirements of informational meetings for  
2 utility easement permits and franchises.

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

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1 Section 1. Section four hundred eighty-nine point two  
2 (489.2), Code 1975, is amended by inserting after unnumbered  
3 paragraph five (5) the following new unnumbered paragraph:

4 NEW UNNUMBERED PARAGRAPH. If a landowner is not given  
5 notice by certified mail of the informational meeting, the  
6 informational meeting shall not be void if the commerce com-  
7 mission finds that a good faith effort was made to give notice  
8 to each landowner or that a copy of the information provided  
9 at the meeting has been given to the landowner.

10 Sec. 2. Section four hundred ninety point five (490.5),  
11 Code 1975, is amended by inserting after unnumbered paragraph  
12 six (6) the following new unnumbered paragraph:

13 NEW UNNUMBERED PARAGRAPH. If a landowner is not given  
14 notice by certified mail of the informational meeting, the  
15 informational meeting shall not be void if the commerce com-  
16 mission finds that a good faith effort was made to give notice  
17 to each landowner or that a copy of the information provided  
18 at the meeting has been given to the landowner.

19 Sec. 3. Chapter four hundred ninety (490), Code 1975,  
20 is amended by adding the following new section:

21 NEW SECTION. Any person, company or corporation proposing  
22 to construct a pipeline or other facility which involves the  
23 taking of property under the right of eminent domain and  
24 desiring to enter upon the land, which it proposes to  
25 appropriate, for the purpose of examining or surveying the  
26 same, shall first file with the Iowa state commerce commission,  
27 a written statement under oath setting forth the proposed  
28 routing of the line or facility including a description of  
29 the lands to be crossed, the names and addresses of owners,  
30 together with request that a permit be issued by said  
31 commission authorizing said person, company or corporation  
32 or its duly appointed representative to enter upon the land  
33 for the purpose of examining and surveying and to take and  
34 use thereon any vehicle and surveying equipment necessary  
35 in making the survey. Said commission shall within ten days

1 after said request issue a permit, accompanied by such bond  
2 in such amount as the commission shall approve, to the person,  
3 company or corporation making said application, if in its  
4 opinion the application is made in good faith and not for  
5 the purpose of harassing the owner of the land. If the  
6 commission is of the opinion that the application is not made  
7 in good faith or made for the purpose of harassment to the  
8 owner of said land it shall set the matter for hearing and  
9 it shall be heard not more than twenty days after filing said  
10 application. Notice of the time and place of hearing shall  
11 be given by said commission, to the owner of said land by  
12 registered mail with a return receipt requested, not less  
13 than ten days preceding date of hearing.

14 Any person, company or corporation that has obtained a  
15 permit in the manner herein prescribed may enter upon said  
16 land or lands, as above provided, and shall be liable for  
17 actual damages sustained in connection with such entry. An  
18 action in damages shall be the exclusive remedy.

19 EXPLANATION

20 The bill allows a good faith effort to contact all land-  
21 owners to sustain an informational meeting if a landowner  
22 does not receive notice by certified mail. The bill also  
23 allows the utility to contact the landowner or survey the  
24 land prior to the informational meeting to determine the  
25 condition of the land for consideration in determining the  
26 route of the pipeline.

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Bill IV

PREPARED FOR THE EMINENT  
DOMAIN STUDY COMMITTEE BY  
THE LEGISLATIVE SERVICE  
BUREAU FOR DISCUSSION  
PURPOSES ONLY.

December, 1974

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act requiring an offer every twenty years to renegotiate  
2 the price or damages paid for an easement acquired for a public  
3 purpose and providing a penalty.

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

5 Section 1. Chapter four hundred seventy-two (472), Code  
6 1975, is amended by adding the following new section:

7 NEW SECTION. Whenever an easement is acquired for a public  
8 purpose by condemnation or by purchase where condemnation  
9 is available upon land which is and continues to be used for  
10 the cultivation of crops, the condemnor or purchaser shall  
11 every twenty years offer to the owner a renegotiation of the  
12 damages or price. The renegotiation shall be proportional  
13 to the change in the assessed valuation of the tract containing  
14 the easement. The offer shall be made by published notice  
15 in newspapers of general circulation in the area once a week  
16 for two weeks stating the nature and owner of the easement  
17 and the county, township and section number of the land in  
18 which the easement is contained, and requesting the owner  
19 to make application for the renegotiation. If the owner of  
20 the easement fails to make such an offer, he shall be liable  
21 for a civil penalty of one hundred dollars for each easement.

22 . EXPLANATION

23 The bill requires the owner of an easement acquired by  
24 condemnation or by purchase where condemnation is available  
25 and used for a public purpose to offer every twenty years

1 to the owner of agricultural land containing the easement  
2 a readjustment of the payment proportional to the change in  
3 the assessed valuation of the land.

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Prepared for the Eminent  
Domain Study Committee  
By the Legislative Service  
Bureau  
December, 1974  
Bill V

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act to require condemnors to grant to condemnees and  
2 certain sellers the option to repurchase unused land.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Chapter four hundred seventy-two (472), Code  
2 1975, is amended by adding the following new section:

3 NEW SECTION. DISPOSAL OF UNUSED LAND. The option to  
4 purchase "unused land" shall be granted to the condemnee or  
5 seller or the subsequent purchaser of the whole fee from which  
6 the unused land was acquired if the original condemnee or  
7 seller is deceased or cannot be located. The option shall  
8 be granted within five years of purchase or entry of final  
9 judgment under condemnation proceedings. The option shall  
10 be exercised, if at all, within ninety days of its grant.  
11 The price to the original condemnee or seller of the "unused  
12 land" shall be the original acquisition price of the condemnor  
13 or purchaser. The price to a subsequent purchaser shall be  
14 the market value of the "unused land".

15 Failure to grant an option where required by this section  
16 to the original seller or condemnee shall be remediable in  
17 damages only. The damages shall be the difference between  
18 the original acquisition price and the present market value.  
19 An action for specific performance shall not lie.

20 For the purposes of this section "unused land" shall mean  
21 any land which has been determined by the condemnor or  
22 purchaser to be unnecessary to the completion of the project  
23 for which it was acquired. Land not so used within five years  
24 of its acquisition shall be presumed to be unused land. In  
25 action to recover damages, the burden is on the condemnor  
26 or purchaser to prove that the land has been or will be used.

27 EXPLANATION

28 This bill requires that land acquired for a public purpose,  
29 whether by condemnation or purchase, which has been determined  
30 by the condemnor or purchaser to be unused land, be offered  
31 to the condemnee or seller for a period of ninety days  
32 following the determination. It also provides that a wrongful  
33 determination is remediable in damages only and not by specific  
34 performance. This prevents clouds on the title which might  
35 otherwise arise.

Prepared for the Eminent Domain  
Study Committee by the  
Legislative Service Bureau  
December, 1974

Bill VI

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act relating to the duties of public utilities when  
2 acquiring easements.

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

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1 Section 1. Section four hundred ninety point five (490.5),  
2 unnumbered paragraph seven (7), Code 1975, is amended to read  
3 as follows:

4 No person, company, or corporation seeking rights under  
5 this chapter shall negotiate or purchase any easements or  
6 other interests in land in any county known to be affected  
7 by the proposed project prior to the informational meeting  
8 and informing the property owner of areas that are negotiable  
9 so that the property owner does understand that he has the  
10 right to negotiate all terms including the depth at which  
11 the pipeline should be buried depending upon area conser-  
12 vation and agricultural practices, the degree of responsibility  
13 the property owner will assume regarding damage to the  
14 pipeline, and allowable terms of either a one-time payment  
15 plus annual rental settlement or other alternatives.

16 EXPLANATION

17 The bill requires a utility, prior to negotiating for a  
18 pipeline easement, to inform the property owner that all terms  
19 are negotiable.

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