

## EMINENT DOMAIN LAW (CONDEMNATION)

### Footnotes

This chapter not enacted as a part of this title; transferred from chapter 471 in Code 1993

#### **6A.1 Exercise of power by state.**

Proceedings may be instituted and maintained by the state of Iowa, or for the use and benefit thereof, for the condemnation of such private property as may be necessary for any public improvement which the general assembly has authorized to be undertaken by the state, and for which an available appropriation has been made. The executive council shall institute and maintain such proceedings in case authority to so do be not otherwise delegated.

[C73, § 1271; C97, § 2024; S13, § 2024-d; C24, 27, 31, 35, 39, § **7803**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 471.1]

C93, § 6A.1

### Footnotes

State parks and highways connecting therewith, § 461A.7, 461A.8

#### **6A.2 On behalf of federal government.**

The executive council may institute and maintain such proceedings when private property is necessary for any use of the government of the United States.

[S13, § 2024-a; C24, 27, 31, 35, 39, § **7804**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 471.2]

C93, § 6A.2

### Footnotes

Condemnation by federal government, § 1.4

#### **6A.3 Conveyance by state to federal government.**

When land or any easement therein is condemned by the state for the use and benefit of the United States, the governor, after the land has been finally acquired, shall have power to convey, to the United States, the easement or lands so acquired and all rights of the state therein.

[S13, § 2024-b; C24, 27, 31, 35, 39, § **7805**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 471.3]

C93, § 6A.3

#### **6A.4 Right conferred.**

The right to take private property for public use is hereby conferred:

1. *Counties.* Upon all counties for public purposes which are reasonable and necessary as an incident to the

powers and duties conferred upon counties.

2. *Owners of land without a way to the land.* Upon the owner or lessee of lands, which have no public or private way to the lands, for the purpose of providing a public way which will connect with an existing public road. The condemned public way shall not exceed forty feet in width when such lands are agricultural or have a single residence located on them. For all other uses, the condemned public way shall not exceed sixty-six feet. The condemned public way shall be located on a division, subdivision or "forty" line, or immediately adjacent thereto, and along the line which is the nearest feasible route to an existing public road, or along a route established for a period of ten years or more by an easement of record or by use and travel to and from the property by the owner and the general public. The public way shall not interfere with buildings, orchards, or cemeteries. When passing through enclosed lands, the public way shall be fenced on both sides by the condemner upon request of the owner of the condemned land. The condemner or the condemner's assignee shall provide easement for access to the owner of property severed by the condemnation. The public way shall be maintained by the condemner or the condemner's assignee, and shall not be considered any part of the primary or secondary road systems.

A public way condemned under this subsection shall not be considered an existing public road in subsequent condemnations to provide a public way for access to an existing public road.

3. *Owners of mineral lands.* Upon all owners, lessees, or possessors of land, for a railway right-of-way thereto not exceeding one hundred feet in width and located wherever necessary or practical, when such lands have no railway thereto and contain coal, stone, gravel, lead, or other minerals and such railway is necessary in order to reach and operate any mine, quarry, or gravel bed on said land and transport the products thereof to market. Such right-of-way shall not interfere with buildings, orchards, or cemeteries, and when passing through enclosed lands, fences shall be built and maintained on both sides thereof by the party condemning the land and by that party's assignees. The jury, in the assessment of damages, shall consider the fact that a railway is to be constructed thereon.

4. *Cemetery associations.* Upon any private cemetery or cemetery association which is incorporated under the laws of this state relating to corporations not for pecuniary profit, and having its cemetery located outside the limits of a city, for the purpose of acquiring necessary grounds for cemetery use or reasonable additions thereto. The right granted in this subsection shall not be exercised until the board of supervisors, of the county in which the land sought to be condemned is located, has, on written application and hearing, on such reasonable notice to all interested parties as it may fix, found that the land, describing it, sought to be condemned, is necessary for cemetery purposes. The association shall pay all costs attending such hearing.

5. *Subdistricts of soil and water conservation districts.* Upon a subdistrict of a soil and water conservation district for land or rights or interests in the land as reasonable and necessary to carry out the purposes of the subdistrict.

6. *Cities.* Upon all cities for public purposes which are reasonable and necessary as an incident to the powers and duties conferred upon cities.

1. [S13, § 2024-f; C24, 27, 31, 35, 39, § **7806**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, § 471.4; 81 Acts, ch 117, § 1084]

2. [C97, § 2028; S13, § 2028; C24, 27, 31, 35, 39, § **7806**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, § 471.4]

3. [C97, § 2028, 2031; S13, § 2028; C24, 27, 31, 35, 39, § **7806**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, § 471.4]

4. [S13, § 1644-ae; C24, 27, 31, 35, 39, § **7806**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, § 471.4]

5. [C62, 66, 71, 73, 75, 77, 79, 81, S81, § 471.4]

6. [R60, § 1064; C73, § 464, 470, 474; C97, § 722, 880, 881; S13, § 722, 729-b, 741-s; SS15, § 741-d, 879-t, 880, 881; C24, 27, 31, 35, 39, § **6134, 61956197, 6740**; C46, § 397.8, 403.1403.3; C50, § 391A.3, 397.8, 403.1403.3, 420.51; C54, 62, 66, 71, 73, § 368.37, 397.8; C75, 77, 79, 81, S81, § 471.4]

83 Acts, ch 67, § 1; 87 Acts, ch 23, § 55

C93, § 6A.4

2006 Acts, 1st Ex, ch 1001, §1, 49

2006 amendment to subsection 2, unnumbered paragraph 1, takes effect July 14, 2006, and applies to applications for condemnation filed pursuant to § 6B.3 on or after that date; 2006 Acts, 1st Ex, ch 1001, § 49

### **6A.5 Right to purchase.**

Whenever the power to condemn private property for a public use is granted to any officer, board, commission, or other official, or to any county, township, or municipality, such grant shall, unless otherwise declared, be construed as granting authority to the officer, board, or official body having jurisdiction over the matter, to acquire, at its fair market value, and from the parties having legal authority to convey, such right as would be acquired by condemnation.

[R60, § 1317; C73, § 1244, 1247; C97, § 1999, 2002, 2014, 2029; S13, § 1644-a; C24, 27, 31, 35, 39, § **7807**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 471.5]

C93, § 6A.5

### **6A.6 Railways.**

The Iowa railway finance authority or any railway corporation, may acquire by condemnation property as necessary for the location, construction, and convenient use of a railway. The Iowa railway finance authority may acquire fee title or a lesser property interest. The authority shall offer to sell its interest in the property at fair market value to the adjoining property owners upon abandonment. The acquisition shall carry the right to use for the construction and repair of the railway and its appurtenances any earth, gravel, stone, timber, or other material, on or from the land taken.

[R60, § 1314; C73, § 1241; C97, § 1995; S13, § 1995; C24, 27, 31, 35, 39, § **7808**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 471.6]

83 Acts, ch 121, § 9

C93, § 6A.6

### **6A.7 Cemetery lands.**

No lands actually platted, used, and devoted to cemetery purposes shall be taken for any railway purpose without the consent of the proper officers or owners thereof.

[S13, § 1995; C24, 27, 31, 35, 39, § **7809**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 471.7]

C93, § 6A.7

## **6A.8 Limitation on right-of-way.**

Land taken for railway right-of-way, otherwise than by consent of the owner, shall not exceed one hundred feet in width unless greater width is necessary for excavation, embankment, or depositing waste earth.

[R60, § 1314; C73, § 1241; C97, § 1995; S13, § 1995; C24, 27, 31, 35, 39, § **7810**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 471.8]

C93, § 6A.8

## **6A.9 Additional purposes.**

The Iowa railway finance authority or a railway corporation may, by condemnation or otherwise, acquire lands for the following additional purposes:

1. For necessary additional depot grounds or yards.
2. For constructing a track or tracks to any mine, quarry, gravel pit, manufacturing plant, warehouse, or mercantile establishment.
3. For additional or new right-of-way for constructing double track, reducing or straightening curves, changing grades, shortening or relocating portions of the line, and for excavations, embankments, or places for depositing waste earth.
4. For the preservation of abandoned railroad right-of-way for future railroad use.

[R60, § 1314; C73, § 1241, 1242; C97, § 1995, 1996, 1998; S13, § 1995, 1998; C24, 27, 31, 35, 39, § **7811**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 471.9]

83 Acts, ch 121, § 10

C93, § 6A.9

## **6A.10 Initiating railroad condemnation.**

1. The railway corporation shall apply to the department of transportation for permission to condemn. The railway corporation shall serve notice of the application and hearing and provide a copy of the legal description of the property to be condemned to the owner and any recordholders of liens and encumbrances on any land described in the application. The department may, after hearing, report to the clerk of the district court of the county in which the land is situated the description of the land sought to be condemned. The corporation may begin condemnation procedures in district court for the land described by the department.

2. The railway finance authority may begin condemnation proceedings in district court.

[C97, § 1998; S13, § 1998; C24, 27, 31, 35, 39, § **7812**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 471.10; 81 Acts, ch 22, § 22]

83 Acts, ch 121, § 11

C93, § 6A.10

93 Acts, ch 47, § 17; 93 Acts, ch 87, § 1

#### **6A.11 Lands for water stations how set aside.**

Lands which are sought to be condemned for water stations, dams, or reservoirs, including all the overflowed lands, if any, shall, if requested by the owner, be set aside in a square or rectangular shape by the department of transportation or district court.

[C73, § 1242; C97, § 1996; C24, 27, 31, 35, 39, § **7813**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 471.11; 81 Acts, ch 22, § 22]

83 Acts, ch 121, § 12

C93, § 6A.11

#### **6A.12 Access to water overflow limited.**

An owner of land, which has in part been condemned for water stations, dams, or reservoirs, shall not be deprived, without the owner's consent, of access to the water, or the use thereof, in common with the company, on the owner's own land, nor, without the owner's consent, shall the owner's dwelling, outhouses, or orchards be overflowed, or otherwise injuriously affected by such condemnation.

[C73, § 1242; C97, § 1996; C24, 27, 31, 35, 39, § **7814**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 471.12]

C93, § 6A.12

#### **6A.13 Change in streams.**

When a railway company would have the right to excavate a channel or ditch and thereby change and straighten the course of a stream or watercourse, which is too frequently crossed by such railway, and thereby protect the right-of-way and roadbed, or promote safety and convenience in the operation of the railway, it may, by condemnation or otherwise, acquire sufficient land on which to excavate such ditch or channel.

[C97, § 2014; C24, 27, 31, 35, 39, § **7815**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 471.13]

C93, § 6A.13

#### **6A.14 Unlawful diversion prohibited.**

Nothing in section 6A.13 shall give such corporation the right to change the course of any stream or watercourse where such right does not otherwise exist, nor, without the owner's consent, to divert such stream or watercourse from any cultivated meadow or pasture land, when it only touches such lands at one point.

[C97, § 2014; C24, 27, 31, 35, 39, § **7816**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 471.14]

C93, § 6A.14

#### **6A.15 Reserved.**

#### **6A.16 Right to condemn abandoned right-of-way.**

Railroad right-of-way which has been abandoned by order of the proper authority, may be condemned by a railway corporation or the Iowa railway finance authority before or after the track materials have been removed. The procedure to condemn abandoned right-of-way shall be the same as for an original

condemnation.

[C73, § 1260; C97, § 2015; C24, 27, 31, 35, 39, § **7818**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 471.16]

83 Acts, ch 121, § 13

C93, § 6A.16

**6A.17** Reserved.

**6A.18 No double damages.**

Owners of abandoned right-of-way which was originally condemned for rail purposes shall not receive additional compensation unless the track materials were removed prior to the second condemnation.

[C73, § 1261; C97, § 2016; C24, 27, 31, 35, 39, § **7820**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 471.18]

83 Acts, ch 121, § 14

C93, § 6A.18

**6A.19 Interpretative clause.**

A grant in this chapter of right to take private property for a public use shall not be construed as limiting a like grant elsewhere in the Code for another and different use.

[C24, 27, 31, 35, 39, § **7821**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 471.19]

C93, § 6A.19

**6A.20 Description of land furnished.**

Whenever any person, state department, or political subdivision takes title to land in fee simple for a public use by condemnation or by purchase in lieu of condemnation, the purchaser shall furnish to the owner of the land a legal description of the part taken and a legal description of the remainder which is compatible with the existing abstract description of the entire tract of land. For the purposes of this section a center line description is compatible only when it contains reference points which are a part of and tied to the abstract description.

[C71, 73, 75, 77, 79, 81, § 471.20]

C93, § 6A.20

**6A.21 Condemnation of agricultural land definitions.**

1. Except as otherwise provided, for purposes of this chapter and chapter 6B:

*a. "Agricultural land"* means real property owned by a person in tracts of ten acres or more and not laid off into lots of less than ten acres or divided by streets and alleys into parcels of less than ten acres, and that has been used for the production of agricultural commodities during three out of the past five years. Such use of property includes, but is not limited to, the raising, harvesting, handling, drying, or storage of crops used for

feed, food, seed, or fiber; the care or feeding of livestock; the handling or transportation of crops or livestock; the storage, treatment, or disposal of livestock manure; and the application of fertilizers, soil conditioners, pesticides, and herbicides on crops. Agricultural land includes land on which is located farm residences or outbuildings used for agricultural purposes and land on which is located facilities, structures, or equipment for agricultural purposes. Agricultural land includes land taken out of agricultural production for purposes of environmental protection or preservation.

*b. "Private development purposes"* means the construction of, or improvement related to, recreational trails, recreational development paid for primarily with private funds, housing and residential development, or commercial or industrial enterprise development.

*c. "Public use" or "public purpose" or "public improvement"* does not include the authority to condemn agricultural land for private development purposes unless the owner of the agricultural land consents to the condemnation.

2. The limitation on the definition of public use, public purpose, or public improvement does not apply to the establishment, relocation, or improvement of a road pursuant to chapter 306, or to the establishment of a railway under the supervision of the department of transportation as provided in section 327C.2, or to an airport as defined in section 328.1, or to land acquired in order to replace or mitigate land used in a road project when federal law requires replacement or mitigation. This limitation also does not apply to utilities, persons, companies, or corporations under the jurisdiction of the Iowa utilities board in the department of commerce or to any other utility conferred the right by statute to condemn private property or to otherwise exercise the power of eminent domain.

99 Acts, ch 171, §1, 41, 42; 2006 Acts, 1st Ex, ch 1001, §2, 49

2006 amendment to subsection 2 takes effect July 14, 2006, and applies to applications for condemnation filed pursuant to § 6B.3 on or after that date; 2006 Acts, 1st Ex, ch 1001, § 49

#### **6A.22 Additional limitations on exercise of power definitions.**

1. In addition to the limitations in section 6A.21, the authority of an acquiring agency to condemn any private property through eminent domain may only be exercised for a public purpose, public use, or public improvement. However, if the owner of the property consents to the condemnation, the property may be condemned for any purpose.

*2. a. "Public use", "public purpose", or "public improvement"* means one or more of the following:

(1) The possession, occupation, and enjoyment of property by the general public or governmental entities.

(2) The acquisition of any interest in property necessary to the function of a public or private utility, common carrier, or airport or airport system.

(3) Private use that is incidental to the public use of the property, provided that no property shall be condemned solely for the purpose of facilitating such incidental private use.

(4) The acquisition of property pursuant to chapter 455H.

(5) (a) The acquisition of property for redevelopment purposes and to eliminate slum or blighted conditions in that portion of an urban renewal area designated as a slum or blighted area if each parcel, or any improvements thereon, for which condemnation is sought is determined by the governing body of the municipality to be in a slum or blighted condition. However, for a project or acquisition plan adopted by the governing body of a municipality after due deliberation and public input, if seventy-five percent or more of

the area included in the plan consists of property in a slum or blighted condition at the time the plan was established, the entire project or acquisition plan area is subject to condemnation by the municipality. The project or acquisition plan area shall only include the adjacent and contiguous parcels necessary for the completion of planned activities for a specific business or housing project. Before a municipality exercises its eminent domain authority to acquire properties in a project or acquisition plan area that are not in a slum or blighted condition, the municipality shall be required to adopt a resolution by a two-thirds majority to authorize the acquisition of such property by eminent domain. The resolution shall make a finding that includes at a minimum all of the following:

(i) The taking of such property is necessary to achieve the project or acquisition plan objectives.

(ii) The taking of property for the project or acquisition plan will eliminate or rehabilitate the slum and blighted conditions in the area.

(iii) If the specific project is for a business, the proposed project or acquisition plan will confer economic benefits upon the municipality.

(b) For purposes of this subparagraph (5):

(i) "*Blighted condition*" means the presence of a substantial number of slum or deteriorated structures; insanitary or unsafe conditions; excessive and uncorrected deterioration of site or other improvements; tax or special assessment delinquency exceeding the fair value of the land; defective or unusual conditions of title; or the existence of conditions which endanger life or property by fire and other causes; or the existence of conditions which retard the provision of housing accommodations for low or moderate income families, or is a menace to the public health and safety in its present condition and use.

(ii) "*Slum condition*" means a condition conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime, or detrimental to the public health and safety due to a predominance of buildings or improvements, whether residential or nonresidential, by reason of the following: by reason of dilapidation, deterioration that is excessive and uncorrected, age or obsolescence; by reason of inadequate provision for sanitation; by reason of high density of population and overcrowding; by reason of the existence of conditions which endanger life or property by fire and other causes; or by reason of any combination of such factors.

(iii) In no case shall land that is agricultural land be determined to be in a slum condition or blighted condition.

(iv) "*Project or acquisition plan*" means the planned activities of a municipality to rehabilitate or redevelop specific property in that portion of an urban renewal area designated as a slum or blighted area pursuant to chapter 403. The planned activities may include the sale and acquisition of property; demolition and removal of buildings and improvements; construction, repair, and rehabilitation of buildings or other improvements; and installation, construction, or reconstruction of streets and utilities.

(v) "*Economic benefits*" means the creation of new employment opportunities or the retention of employment opportunities.

b. Except as specifically included in the definition in paragraph "a", "*public use*" or "*public purpose*" or "*public improvement*" does not mean economic development activities resulting in increased tax revenues, increased employment opportunities, privately owned or privately funded housing and residential development, privately owned or privately funded commercial or industrial development, or the lease of publicly owned property to a private party.

c. Notwithstanding paragraph "a":

(1) If private property is to be condemned for development or creation of a lake, only that number of acres justified as necessary for a surface drinking water source, and not otherwise acquired, may be condemned. In addition, the acquiring agency shall conduct a review of prudent and feasible alternatives to provision of a drinking water source prior to making a determination that such lake development or creation is reasonable and necessary. Development or creation of a lake as a surface drinking water source includes all of the following:

- (a) Construction of the dam, including sites for suitable borrow material and the auxiliary spillway.
- (b) The water supply pool.
- (c) The sediment pool.
- (d) The flood control pool.
- (e) The floodwater retarding pool.
- (f) The surrounding area upstream of the dam no higher in elevation than the top of the dam's elevation.
- (g) The appropriate setback distance required by state or federal laws and regulations to protect drinking water supply.

For purposes of this subparagraph (1), *"number of acres justified as necessary for a surface drinking water source"* means according to guidelines of the United States natural resource conservation service and according to analyses of surface drinking water capacity needs conducted by one or more registered professional engineers.

(2) The use of eminent domain authority to acquire private property in the unincorporated area of a county for use as an airport, airport system, or aviation facilities is prohibited, notwithstanding any provision of the law to the contrary, if the property to be condemned is located outside the geographic boundaries of the city or county operating the airport, airport system, or aviation facilities or outside the geographic boundaries of the member municipalities of the commission or authority. However, an acquiring agency may proceed with condemnation of property under these circumstances if the board of supervisors of the county where the property for which condemnation is sought is located holds a public hearing on the matter and subsequent to the hearing approves, by resolution, the condemnation action. This subparagraph does not apply if any of the following conditions is met:

- (a) The property to be condemned is for an improvement to an existing airport, airport system, or aviation facilities if such improvement is required by federal law, regulation, or order or if such improvement is included in an airport layout plan approved by the federal aviation administration for the existing site of the airport, airport system, or aviation facilities.
- (b) The property to be condemned has been zoned by a city or county for use as an airport, airport system, or aviation facilities.
- (c) The property to be condemned is for a proposed airport, airport system, or aviation facilities that as of July 1, 2006, were designated in the federal aviation administration national plan for integrated airport services, and the property to be condemned is located within the county where at least one of the cities that will participate in operation of the proposed airport, airport system, or aviation facilities is located.

2006 Acts, 1st Ex, ch 1001, §3, 49

Section is effective July 14, 2006, and applies to applications for condemnation filed pursuant to § 6B.3 on or

after that date; 2006 Acts, 1st Ex, ch 1001, § 49

**6A.23 Exception for certain urban renewal areas.** Repealed by own terms; 2006 Acts, 1st Ex, ch 1001, § 4, 49.

**6A.24 Judicial review of eminent domain authority.**

1. An owner of property described in an application for condemnation may bring an action challenging the exercise of eminent domain authority or the condemnation proceedings. Such action shall be commenced within thirty days after service of notice of assessment pursuant to section 6B.8 by the filing of a petition in district court. Service of the original notice upon the acquiring agency shall be as required in the rules of civil procedure. In addition to the owner of the property, a contract purchaser of record of the property or a tenant occupying the property under a recorded lease shall also have standing to bring such action.

2. An acquiring agency that proposes to acquire property by eminent domain may file a petition in district court seeking a determination and declaration that its finding of public use, public purpose, or public improvement necessary to support the taking meets the definition of those terms. The action shall be commenced by the filing of a petition identifying all property owners whose property is proposed to be acquired, any contract purchaser of record of the property, and any tenant known to be occupying the property, and including a description of the properties proposed to be acquired and a statement of the public use, public purpose, or public improvement supporting the acquisition of the property by eminent domain. The original notice shall be served as required by the rules of civil procedure on each property owner named in the petition and on any contract purchaser of record of the property and on any tenant occupying the property under a recorded lease. Such action may be commenced by an acquiring agency at any time prior to the filing of an application for condemnation pursuant to section 6B.3.

3. For any action brought under this section, the burden of proof shall be on the acquiring agency to prove by a preponderance of the evidence that the finding of public use, public purpose, or public improvement meets the definition of those terms. If a property owner or a contract purchaser of record or a tenant occupying the property under a recorded lease prevails in an action brought under this section, the acquiring agency shall be required to pay the costs, including reasonable attorney fees, of the adverse party.

2006 Acts, 1st Ex, ch 1001, §5, 49

**Footnotes**

Manner of service, R.C.P. 1.3021.315

Section is effective July 14, 2006, and applies to applications for condemnation pending on that date if the appropriate parties have not been served with a notice of assessment pursuant to § 6B.8; 2006 Acts, 1st Ex, ch 1001, § 49