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Commerce, Pass 1/28
Sen. " 1/29, Pass 2/19

HOUSE FILE 31

By HOLDEN, STROMER, PRIEBE,
and FISCHER of Grundy
(Briles, Ollenburg,
Griffin, Potgeter, and
Smith)

Passed House, Date 1-29-71 Passed Senate, Date 3-23-71
Vote: Ayes 27 Nays 0 Vote: Ayes 45 Nays 0
Approved April 1, 1971

A BILL FOR

1 An Act relating to the condemnation of existing utility
2 facilities by cities and towns.
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 1971, is amended by adding sections two (2) through seven (7),
3 inclusive.

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

22 Sec. 3. COURT OF CONDEMNATION. Upon the passage of the
23 resolution as provided in section two (2) of this Act and the
24 presentation of a certified copy thereof to the supreme court
25 while in session, or to the chief justice of the supreme court,
26 the court or chief justice shall within five days appoint as a
27 court of condemnation three district court judges from three
28 judicial districts, one of whom shall be from the district in
29 which the city or town is located, if not a resident of the
30 city or town, and shall enter an order requiring the judges to
31 attend as such court of condemnation at the county seat of the
32 county in which the city or town is located within ten days.
33 The district court judges shall attend and constitute a court
34 of condemnation.

35 Sec. 4. PROCEDURE. Said court when it meets to organize

1 or at any time during the proceedings, which may be adjourned
2 from time to time for any purpose, may fix the time for the
3 appearance of any person that any party desires to have joined
4 in the proceedings, and whom the court deems necessary. The
5 time for appearance shall be sufficiently remote to serve
6 notice upon the parties, but if the time for appearance occurs
7 after the proceedings are begun, the proceedings may be re-
8 viewed by the court to give all parties a full opportunity to
9 be heard.

10 Sec. 5. NOTICE--SERVICE. Persons not voluntarily appear-
11 ing, but having any right, title, or interest in or to the
12 property which is the subject of condemnation, or any part
13 thereof, including all leaseholders, mortgagees and trustees
14 of bondholders, who are to be made parties to the proceedings
15 shall be served with notice of the proceedings and the time
16 and place of meeting of the court in the same manner and for
17 the same length of time as for the service of original notice,
18 either by personal service, or by service by publication, the
19 time so set being the time at which the parties so served are
20 required to appear, and actual personal service of the notice
21 within or without the state shall supersede the necessity for
22 publication.

23 Sec. 6. POWERS OF COURT--DUTY OF CLERK--VACANCY. The
24 court of condemnation shall have power to summon and swear
25 witnesses, take evidence, order the taking of depositions,
26 require the production of any books or papers, and may appoint
27 a shorthand reporter. It shall perform all the duties of
28 commissioners in the condemnation of property. The duties and
29 the method of procedure and condemnation, including provisions
30 for appeal shall be except as otherwise specifically provided,
31 as provided for the taking of private property for works of
32 internal improvement. The clerk of the district court of the
33 county where the city or town is located shall perform all of
34 the duties required of the sheriff in the condemnation; and in
35 case of a vacancy in the court, the vacancy shall be filled in

1 the manner in which the original appointment was made. When
2 necessary by reason of a vacancy, the court may review any
3 evidence in its record.

4 Sec. 7. COSTS--EXPENSES. The costs of the proceedings
5 shall be the same and paid in the same manner as in proceedings
6 in the district court, and the district court judges of the
7 court of condemnation shall receive, while engaged in such
8 service, their actual expenses, which expenses shall be taxed
9 as costs in the case.

10 Sec. 8. Section three hundred eighty-six B point two
11 (386B.2), unnumbered paragraph two (2), Code 1971, is amended
12 as follows:

13 Any municipal corporation shall have the right of eminent
14 domain to acquire private property necessary in connection
15 with the establishment or acquisition, enlargement, extension,
16 improvement, operation and maintenance of a transit system.
17 In the event of the exercise of eminent domain to acquire an
18 existing transit system, the provisions of sections ~~397-20 to~~
19 ~~397-25, inclusive,~~ section one (1) of this Act shall govern so
20 far as applicable.

21 Sec. 9. Sections three hundred ninety-seven point twenty
22 (397.20), three hundred ninety-seven point twenty-one (397.21),
23 three hundred ninety-seven point twenty-two (397.22), three
24 hundred ninety-seven point twenty-three (397.23), three hun-
25 dred ninety-seven point twenty-four (397.24), and three hun-
26 dred ninety-seven point twenty-five (397.25), Code 1971, are
27 repealed.

28 EXPLANATION

29 This bill makes no changes in the present law. The pur-
30 pose of this bill is to consolidate all eminent domain proce-
31 dures into chapter 472 by repealing special condemnation
32 procedures for acquiring existing heating plants, waterworks,
33 gasworks, or electric light and power plants in chapter 397
34 and placing the provisions in chapter 472.

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