

Reprinted

*3-16-95 Amend/Do Pass W/H - 3327 +
Placed on special order calendar
for 3-29-95*

FEB 14 1995

HOUSE FILE 166

Agriculture

BY MERTZ

(COMPANION TO SF 58

BY COMMITTEE ON AGRICULTURE)

(P. 1280)
Passed House, Date 4-5-95
Vote: Ayes 72 Nays 27
Approved _____

Passed Senate, Date _____
Vote: Ayes _____ Nays _____

A BILL FOR

1 An Act relating to procedures and criteria for recovery by
2 private property owners due to inverse condemnation of real
3 property by state government action and providing an
4 applicability date.

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

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HF 166

1 Section 1. NEW SECTION. 651A.1 WHO MAY BRING ACTION.

2 An action to recover just compensation for an inverse
3 condemnation of private property may be brought by any person
4 having or claiming an interest in the property affected.

5 Sec. 2. NEW SECTION. 651A.2 DEFINITIONS.

6 As used in this chapter, unless the context otherwise
7 requires:

8 1. "Constitutional taking" or "taking" means that due to a
9 governmental action, private property is taken in such a
10 manner that compensation to the owner is required by either
11 the fifth or fourteenth amendment to the Constitution of the
12 United States, or article I, section 18, of the Constitution
13 of the State of Iowa.

14 2. a. "Governmental action" means any of the following:

15 (1) Rules of a state agency adopted pursuant to chapter
16 17A that, if enforced, limit the use of private property.

17 (2) Proposed or implemented conditions, requirements, or
18 limitations for licenses or permits issued or granted by a
19 state agency which affect the use of private property.

20 (3) Required dedications or exactions from owners of
21 private property by a state agency.

22 b. "Governmental action" does not include any of the
23 following:

24 (1) Activities as to which the power of eminent domain is
25 formally exercised.

26 (2) The repeal or amendment of rules which results in the
27 discontinuation of government programs or changes to rules
28 which lessen the interference with the use of private
29 property.

30 (3) Law enforcement activities involving seizure or
31 forfeiture of private property for violations of law or for
32 use as evidence in criminal proceedings.

33 (4) Orders that are authorized by statute, are issued by a
34 state agency or court, and result from the violation of a
35 state law.

1 (5) A rule or regulation required to be adopted by the
2 state pursuant to federal law.

3 (6) A rule, regulation, or requirement adopted by a
4 municipality, as defined by section 670.1.

5 (7) A rule, regulation, or requirement adopted by a county
6 including, but not limited to, county legislation as provided
7 in section 331.302.

8 (8) An easement granted for a public purpose, including
9 but not limited to, a utility or public highway, or scenic
10 easement as provided in section 308.4, regardless of whether
11 compensation was paid for the easement.

12 (9) The reduction or elimination of a benefit directly or
13 indirectly conferred upon a person not relating to the use of
14 property and resulting from a governmental action.

15 3. "Inverse condemnation" means an action to recover just
16 compensation for a constitutional or regulatory taking of
17 private property.

18 4. "Private property" means any real property in this
19 state that is owned by a person other than the state, a
20 political subdivision, or other governmental entity and if the
21 property is protected pursuant to either the fifth or
22 fourteenth amendment to the Constitution of the United States,
23 or article I, section 18, of the Constitution of the State of
24 Iowa.

25 5. "Regulatory taking" means government action that
26 reduces the fair market value of the property affected by the
27 government action by more than fifty percent.

28 Sec. 3. NEW SECTION. 651A.3 JURISDICTION.

29 An action for inverse condemnation shall be brought in the
30 county where the private property alleged to be affected by
31 government action is located. The action shall be tried by
32 ordinary proceedings.

33 Sec. 4. NEW SECTION. 651A.4 VERDICT -- SPECIAL.

34 The verdict shall initially indicate whether the plaintiff
35 is entitled to recover for an inverse condemnation of the

1 plaintiff's property. If the plaintiff is entitled to
2 recover, the verdict shall then indicate the amount of the
3 reduction in the fair market value of the plaintiff's property
4 due to the inverse condemnation and any economic losses
5 sustained by the plaintiff due to the inverse condemnation
6 from the time the government action is taken until suit was
7 brought.

8 Sec. 5. NEW SECTION. 651A.5 JUDGMENT.

9 1. If the special verdict indicates the plaintiff is not
10 entitled to recover, the district court shall enter judgment
11 for the defendant.

12 2. If the special verdict indicates the plaintiff is
13 entitled to recover, the district court shall enter an order
14 acknowledging the special verdict. Within five days following
15 the entering of the order, the defendant shall file a notice
16 of election with the district court indicating whether or not
17 the defendant will agree to rescind the government action
18 constituting the constitutional or regulatory taking. If the
19 defendant elects to agree to rescind the government action,
20 the district court shall enter judgment accordingly and award
21 the plaintiff damages equal to the economic loss indicated in
22 the special verdict. If the defendant does not elect to
23 rescind the government action, the district court shall enter
24 a judgment for damages equal to the reduction in the fair
25 market value of the property.

26 The district court shall order the payment of all costs and
27 reasonable attorney fees to any party successfully
28 establishing an inverse condemnation pursuant to this chapter.

29 Sec. 6. NEW SECTION. 651A.6 REMEDY NOT EXCLUSIVE.

30 This chapter does not prevent a party from seeking to
31 recover just compensation for a constitutional taking in any
32 other manner allowed by law.

33 Sec. 7. NEW SECTION. 651A.7 WAIVER OF RIGHTS VOID.

34 An agreement by an individual to waive or otherwise release
35 the individual's rights to benefits or any other rights under

1 this chapter is void.

2 Sec. 8. NEW SECTION. 651A.8 APPLICABILITY.

3 This chapter applies only to government action adopted or
4 enforced on or after July 1, 1995.

5

EXPLANATION

6 This bill establishes a statutory procedure for a person to
7 obtain just compensation for an inverse condemnation of real
8 property. The bill defines inverse condemnation as state
9 government action that constitutes a taking under the United
10 States or Iowa Constitutions or a taking that results in a
11 reduction in the fair market value of the property affected by
12 more than 50 percent. Government action is also defined to
13 include regulatory actions by the state.

14 The bill provides that an action for inverse condemnation
15 under this chapter is by ordinary proceedings and shall be
16 brought in the district court of the county where the affected
17 real property is located. The bill also provides that
18 following trial, a special verdict will be entered indicating
19 whether inverse condemnation occurred, the loss in value of
20 the plaintiff's property, and the economic loss suffered by
21 the plaintiff due to the action. The state, if the verdict is
22 adverse, then has five days to elect whether or not to agree
23 to rescind the offending government action. If the defendant
24 agrees to rescind, judgment is entered accordingly and
25 plaintiff is awarded only the economic loss. If the defendant
26 does not agree to rescind the government action, judgment is
27 entered for the loss in the fair market value of the property.

28 The bill further provides that the remedies under this
29 chapter are not exclusive or waivable for a person aggrieved
30 by an alleged taking and that the bill only applies to
31 government action adopted or enforced on or after July 1,
32 1995.

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**HOUSE FILE 166
FISCAL NOTE**

A fiscal note for House File 166 as amended by H-3327 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

House File 166 as amended by H-3327 establishes a statutory procedure for a person to obtain just compensation for an inverse condemnation of private farm property, defines inverse condemnation as State government action that constitutes a taking under the United States or Iowa Constitutions or a taking that results in a reduction in the fair market value of the private farm property by more than 50.0%, and provides that an action for inverse condemnation under Chapter 651A, Code of Iowa, is by ordinary proceedings and shall be brought in the District Court of the county where the affected private farm property is located.

The Bill also provides that following trial, a special verdict will be entered indicating whether inverse condemnation occurred, the loss in value of the plaintiff's private farm property, and the economic loss suffered by the plaintiff due to the action.

Assumptions

1. Private farm property owners are likely to file claims for loss in property value as a result of inverse condemnation.
2. Two staff attorneys will need to be hired in FY 1996 and one additional staff attorney in FY 1997.
3. Certain State agencies will be required to enforce the regulatory provisions specified.
4. A minimum of ten cases may be tried in District Court each year.

Fiscal Analysis

Department of Justice: The estimated cost to the General Fund will be \$140,000 in FY 1996 to employ two additional staff attorneys to represent certain State agencies. The Department is anticipating an increased caseload as a result of the adoption of HF 166 as amended by H-3327. Additionally, in FY 1997, one additional staff attorney will be required, increasing the total estimated cost to \$220,000.

Judicial Department: The average cost per case for a new criminal offense is estimated to be:

1. District Court: \$7,600
2. Appellate Court: \$44,000

The estimated cost to the General Fund for ten cases to be tried in District Court is \$76,000 and \$440,000 if the ten cases are appealed.

Department of Natural Resources: The adoption of HF 166 as amended by H-3327 will have no significant fiscal impact on the Department of Natural Resources.

Sources:

Judicial Department

Department of Justice

Department of Natural Resources

(LSB 1568hh.2, LAM)

FILED MARCH 29, 1995

BY DENNIS PROUTY, FISCAL DIRECTOR

**HOUSE FILE 166
FISCAL NOTE**

A fiscal note for House File 166 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

House File 166 establishes a statutory procedure for a person to obtain just compensation for an inverse condemnation of real property, defines inverse condemnation as state government action that constitutes a taking under the United States or Iowa Constitutions or a taking that results in a reduction in the fair market value of the property affected by more than 50%, and provides that an action for inverse condemnation under Chapter 651A, Code of Iowa, is by ordinary proceedings and shall be brought in the District Court of the county where the affected real property is located.

The Bill also provides that following trial, a special verdict will be entered indicating whether inverse condemnation occurred, the loss in value of the plaintiff's property, and the economic loss suffered by the plaintiff due to the action.

Assumptions:

1. Property owners are likely to file claims for loss in property value as a result of inverse condemnation of real property by state government action.
2. Two staff attorneys will need to be hired the first year and one additional staff attorney the second year.
3. Certain state agencies will be required to enforce the regulatory provisions specified in HF 166.
4. Approximately two to three cases may be filed with the District Court each year.

Fiscal Analysis:

Department of Justice: The estimated cost to the General Fund will be \$140,000 in FY 1996 to employ two additional staff attorneys to represent certain state agencies. The Department is anticipating an increase in caseloads as a result of the adoption of HF 166. Additionally, in FY 1997, one additional staff attorney will be required, increasing the total estimated cost to \$220,000.

Judicial Department: The average cost per case for a new criminal offense is estimated to be:

1. District Court: \$7,600
2. Appellate Court: \$44,000

The Judicial Department anticipates two to three cases may be tried each year at the District Court level as a result of the adoption of HF 166. The estimated cost to the General Fund for each case tried in District Court and

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appealed is approximately \$52,000.

Sources:

Department of Justice
Judicial Department

(LSB 1568hh, LAM)

FILED MARCH 21, 1995

BY DENNIS PROUTY, FISCAL DIRECTOR

H-3327

1 Amend House File 166 as follows:

2 1. By striking everything after the enacting
3 clause and inserting the following:

4 "Section 1. NEW SECTION. 651A.1 WHO MAY BRING
5 ACTION.

6 An action to recover just compensation for an
7 inverse condemnation of private farm property may be
8 brought by any person having an ownership interest in
9 the private farm property.

10 Sec. 2. NEW SECTION. 651A.2 DEFINITIONS.

11 As used in this chapter, unless the context
12 otherwise requires:

13 1. "Constitutional taking" means that due to a
14 governmental action, private farm property is taken in
15 such a manner that compensation to the owner is
16 required by either the fifth or fourteenth amendment
17 to the Constitution of the United States, or article
18 I, section 18, of the Constitution of the State of
19 Iowa.

20 2. "Farm operation" means a condition or activity
21 which occurs on a farm in connection with the
22 production of agricultural commodities, including, but
23 not limited to, the raising, harvesting, drying, or
24 storage of crops; the maintenance of pasture or
25 grassland; the care or feeding of livestock including
26 poultry; the handling or transportation of crops or
27 livestock including poultry; the production of eggs or
28 milk; the production of fruit or other horticultural
29 crops; the treatment or disposal of wastes resulting
30 from livestock; the creation of noise, odor, dust, or
31 fumes; the operation of machinery and irrigation
32 pumps; ground and aerial seeding and spraying; the
33 application of pesticides as defined in section 206.2;
34 and the employment and use of labor.

35 3. a. "Governmental action" means any of the
36 following:

37 (1) Rules of a state agency adopted pursuant to
38 chapter 17A that, if enforced against private farm
39 property, would directly limit the use of private farm
40 property.

41 (2) Conditions, requirements, or limitations for
42 licenses or permits issued or granted by a state
43 agency which, if applied to private farm property,
44 directly limits the use of the private farm property.

45 (3) Required dedications or exactions from owners
46 of private farm property by a state agency.

47 b. "Governmental action" does not include any of
48 the following:

49 (1) Activities as to which the power of eminent
50 domain is formally exercised.

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1 (2) The repeal or amendment of rules which results
2 in the discontinuation of government programs or
3 changes to rules which lessen the interference with
4 the use of private farm property.

5 (3) Law enforcement activities involving seizure
6 or forfeiture of private farm property for violations
7 of law or for use as evidence in criminal proceedings.

8 (4) Orders that are authorized by statute, are
9 issued by a state agency or court, and result from the
10 violation of a state law.

11 (5) A rule or regulation required to be adopted by
12 the state pursuant to federal law.

13 (6) A rule, regulation, or requirement adopted by
14 a municipality, as defined by section 670.1.

15 (7) A rule, regulation, or requirement adopted by
16 a county including, but not limited to, county
17 legislation as provided in section 331.302.

18 4. "Inverse condemnation" means an action to
19 recover just compensation for a constitutional or
20 regulatory taking of private farm property.

21 5. "Private farm property" means any real property
22 suitable for use in a farm operation, including farm
23 dwellings, improvements, and buildings or structures
24 incidental to farm operations, in this state that is
25 owned by a person other than the state, a political
26 subdivision, or other governmental entity and if the
27 property is protected pursuant to either the fifth or
28 fourteenth amendment to the Constitution of the United
29 States, or article I, section 18, of the Constitution
30 of the State of Iowa.

31 6. "Regulatory taking" means government action
32 that reduces the fair market value of the private farm
33 property by more than fifty percent.

34 Sec. 3. NEW SECTION. 651A.3 JURISDICTION.

35 An action for inverse condemnation shall be brought
36 in the county where the private farm property alleged
37 to be subject to an inverse condemnation is located.
38 The action shall be tried by ordinary proceedings.

39 Sec. 4. NEW SECTION. 651A.4 VERDICT -- SPECIAL.

40 The verdict shall initially indicate whether the
41 plaintiff is entitled to recover for an inverse
42 condemnation of the plaintiff's private farm property.
43 If the plaintiff is entitled to recover, the verdict
44 shall then indicate the amount of the reduction in the
45 fair market value of the plaintiff's private farm
46 property due to the inverse condemnation and any
47 economic losses sustained by the plaintiff due to the
48 inverse condemnation from the time the government
49 action is taken until suit was brought. The reduction
50 in fair market value shall be shown by specifying the

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1 fair market value of the plaintiff's private farm
2 property prior to or absent the constitutional or
3 regulatory taking and by indicating the percentage
4 reduction in value caused by the constitutional or
5 regulatory taking.

6 Sec. 5. NEW SECTION. 651A.5 JUDGMENT.

7 1. If the special verdict indicates the plaintiff
8 is not entitled to recover, the district court shall
9 enter judgment for the defendant.

10 2. If the special verdict indicates the plaintiff
11 is entitled to recover, the district court shall enter
12 an order acknowledging the special verdict. Within
13 forty-five days following the expiration of time for
14 appeal or issuance of procedendo following appeal, the
15 defendant shall file a notice of election with the
16 district court indicating whether or not the defendant
17 will agree to rescind the government action
18 constituting the constitutional or regulatory taking.
19 If the defendant elects to agree to rescind the
20 government action, the district court shall enter
21 judgment accordingly and award the plaintiff damages
22 equal to the economic loss indicated in the special
23 verdict. If the defendant does not elect to rescind
24 the government action, the district court shall enter
25 a judgment for damages equal to the percentage
26 reduction in the fair market value of the property.
27 In a case where judgment for the full fair market
28 value is entered and paid, the defendant shall obtain
29 title to the property.

30 The district court shall order the payment of all
31 costs and reasonable attorney fees to any party
32 successfully establishing an inverse condemnation
33 pursuant to this chapter.

34 Sec. 6. NEW SECTION. 651A.6 REMEDY NOT
35 EXCLUSIVE.

36 This chapter does not prevent a party from seeking
37 to recover just compensation for a constitutional
38 taking in any other manner allowed by law.

39 Sec. 7. NEW SECTION. 651A.7 WAIVER OF RIGHTS
40 VOID.

41 An agreement by a person having an ownership
42 interest to waive or otherwise release the rights
43 under this chapter as a condition of obtaining
44 government action is void unless it is in settlement
45 of a legal claim brought under the provisions of this
46 chapter.

47 Sec. 8. NEW SECTION. 651A.8 APPLICABILITY.

48 This chapter applies only to government action
49 adopted or enforced on or after July 1, 1995."

By COMMITTEE ON AGRICULTURE
EDDIE of Buena Vista, Chairperson

H-3327 FILED MARCH 16, 1995

Adopted
4-5-95
(P. 1280)

HOUSE FILE 166

H-3457

1 Amend the amendment, H-3327, to House File 166 as
2 follows:

3 1. Page 2, by inserting after line 17 the
4 following:

5 "() An easement granted for a public purpose,
6 including but not limited to, a utility or public
7 highway, or scenic easement as provided in section
8 308.4, regardless of whether compensation was paid for
9 the easement."

10 2. By renumbering as necessary.

By WITT of Black Hawk HOLVECK of Polk
BURNETT of Story MASCHER of Johnson
SHOULTZ of Black Hawk

H-3457 FILED MARCH 24, 1995

out of order 3-29-95 (P. 1074)

HOUSE FILE 166

H-3458

1 Amend the amendment, H-3327, to House File 166 as
2 follows:

3 1. Page 2, by inserting after line 17, the
4 following:

5 "() An action necessary to protect environmental
6 quality, including measures to preserve air and water
7 quality, the disposal of solid or hazardous wastes,
8 and the loss of soil from erosion."

9 2. By renumbering as necessary.

By WITT of Black Hawk HOLVECK of Polk
BURNETT of Story MASCHER of Johnson
SHOULTZ of Black Hawk

H-3458 FILED MARCH 24, 1995

*Last 3-29-95
(P. 1076)*

HOUSE FILE 166

H-3447

1 Amend the amendment, H-3327, to House File 166 as
2 follows:

3 1. Page 1, line 14, by striking the word
4 "governmental" and inserting the following:
5 "government".

6 2. Page 1, line 35, by striking the word
7 ""Governmental" and inserting the following:
8 ""Government".

9 3. Page 1, line 47, by striking the word
10 ""Governmental" and inserting the following:
11 ""Government".

12 4. Page 2, by inserting after line 17 the
13 following:

14 "() The sale of private farm property subject to
15 a lien held by a governmental entity.

16 () An action involving private parties which is
17 conducted under state law, or enforced by an officer
18 of a governmental entity, including but not limited
19 to, a proceeding to enforce a debt against private
20 farm property under chapter 624, to forfeit a contract
21 to purchase private farm property under chapter 656,
22 or to otherwise levy on, execute on, seize, or attach
23 private farm property.

24 () An easement granted pursuant to section
25 308.4.

26 () The reduction or elimination of a benefit
27 directly or indirectly conferred upon an owner which
28 is not related to the use of the private farm property
29 and resulting from a government action, including but
30 not limited to, the removal of a facility or
31 infrastructure.

32 () An action which constitutes the exercise of
33 the state's police power to prevent a demonstrable
34 harm to the public health and safety, including any
35 use of private farm property that is structurally
36 unsafe; that constitutes a fire hazard; that consti-
37 tutes a hazard to the public health or safety because
38 of inadequate maintenance, dilapidation, or
39 abandonment; or that is otherwise dangerous to human
40 life."

41 5. Page 2, line 35, by striking the word "shall"
42 and inserting the following: "may".

43 6. Page 2, line 36, by inserting after the word
44 "in" the following: "the district court sitting in".

45 7. Page 3, by striking lines 21 through 23 and
46 inserting the following: "judgment accordingly.
47 However, if the defendant rescinds the government
48 action, the damages shall be limited only to the
49 actual and demonstrable economic losses incurred by
50 the plaintiff as a result of the government action

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- 1 during the period when the government action was in
- 2 effect. If the defendant does not elect to rescind".
- 3 8. Page 3, line 31, by inserting before the word
- 4 "costs" the following: "court".
- 5 9. Page 3, by striking lines 39 through 46.
- 6 10. By renumbering as necessary.

By DINKLA of Guthrie

KLEMME of Plymouth

EDDIE of Buena Vista

LAMBERTI of Polk

H-3447 FILED MARCH 23, 1995

Adapted 3-29-95 (P. 1074)

HOUSE FILE 166

H-3439

- 1 Amend the amendment, H-3327, to House File 166 as
- 2 follows:
- 3 1. Page 3, line 5, by inserting after the word
- 4 "taking." the following: "All valuations shall be
- 5 calculated using the present value of the private farm
- 6 property."

By BERNAU of Story

H-3439 FILED MARCH 23, 1995

Lost 4-5-95 (P. 1272)

HOUSE FILE 166

H-3442

- 1 Amend the amendment, H-3327, to House File 166 as
- 2 follows:
- 3 1. Page 3, line 32, by inserting after the word
- 4 "condemnation" the following: "or defending against
- 5 an inverse condemnation action".

By FALLON of Polk

H-3442 FILED MARCH 23, 1995

WITHDRAWN

4-5-95

HOUSE FILE 166

H-3467

- 1 Amend the amendment, H-3327, to House File 166 as
- 2 follows:
- 3 1. Page 3, line 49, by striking the words "or
- 4 enforced".

By WEIGEL of Chickasaw

H-3467 FILED MARCH 27, 1995

Last 4-5-95 (P.1273)

HOUSE FILE 166

H-3471

- 1 Amend the amendment, H-3327, to House File 166 as
- 2 follows:
- 3 1. Page 2, by striking lines 46 through 49 and
- 4 inserting the following: "property due to the inverse
- 5 condemnation. The reduction".
- 6 2. Page 3, by striking lines 21 through 23 and
- 7 inserting the following: "judgment accordingly. If
- 8 the defendant does not elect to rescind".

By KOENIGS of Mitchell

H-3471 FILED MARCH 27, 1995

Out of Order

3-29-95

(P.1074)

HOUSE FILE 166

H-3472

1 Amend the amendment, H-3327, to House File 166 as
2 follows:

3 1. Page 2, by inserting after line 17 the
4 following:

5 "____. "Homeowner" means a person who owns and
6 permanently occupies a residence that the person may
7 claim as a homestead under chapter 425."

8 2. Page 3, by inserting after line 46 the follow-
9 ing:

10 "Sec. ____ . NEW SECTION. 651A.7A HOMEOWNER RIGHT
11 OF ACTION.

12 1. A homeowner may commence an action in state
13 court in the district where the homeowner's residence
14 is located to recover financial compensation for any
15 diminution or loss in the value of the homeowner's
16 homestead against any person whose activity conducted
17 pursuant to state law has caused or significantly
18 contributed to the diminution or loss in value of the
19 homestead. In bringing such action, the homeowner
20 shall have the burden of demonstrating that the
21 activity conducted by the defendant pursuant to state
22 law caused a reduction in the value or use of the
23 homeowner's homestead.

24 2. A homeowner authorized to bring suit under this
25 section shall be entitled to recover against the
26 person an amount equal to the diminution or loss in
27 value of the homestead. Compensation for diminution
28 or loss in value shall be determined by the fair
29 market value of the homestead in the absence of the
30 challenged activity minus the fair market value of the
31 homestead reduced by the effects of the activity. The
32 court also may enjoin violations of any statute, rule,
33 or permit, the violation of which has caused or
34 contributed to the diminution or loss of the
35 homeowner's homestead value.

36 3. A homeowner who receives a compensation award
37 under this section shall be awarded reasonable
38 attorney's fees, including the cost of expert
39 witnesses and other reasonable court costs as are
40 necessarily incurred by the prevailing homeowner.

41 4. Prior to filing suit under this section, a
42 homeowner shall deliver a notice of intent to sue to
43 the person allegedly liable under this section, and to
44 the head of the agency implementing the law governing
45 the challenged activity, at least thirty days prior to
46 the filing of the suit. If either party requests that
47 the agency attempt to achieve an informal resolution
48 of a claim, the agency head shall convene a meeting of
49 the parties and use best efforts to arrive at a just
50 resolution of the claim in order to avoid unnecessary

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1 litigation costs."

2 3. Page 3, by inserting after line 49 the

3 following:

4 "____. Title page, line 3, by inserting after the

5 word "action" the following: "or other action,."

By KOENIGS of Mitchell

H-3472 FILED MARCH 27, 1995

not Harmon 3/29/95 (P. 1072)

HOUSE FILE 166

H-3473

1 Amend the amendment, H-3327, to House File 166 as

2 follows:

3 1. Page 1, by inserting after line 19 the

4 following:

5 "____. "Economic loss" means the future loss of

6 income or revenue earned by the private farm property

7 which is calculated by projecting forward income or

8 revenue previously earned by the private farm

9 property, but does not include the capacity of the

10 private farm property to earn income or revenue based

11 on speculative or possible uses of the private farm

12 property."

By KOENIGS of Mitchell

H-3473 FILED MARCH 27, 1995

lost 3/29/95 (P. 1075)

HOUSE FILE 166

H-3478

1 Amend the amendment, H-3327, to House File 166 as

2 follows:

3 1. Page 2, line 33, by striking the word "fifty"

4 and inserting the following: "eighty".

By WEIGEL of Chickasaw

H-3478 FILED MARCH 27, 1995

*lost 4-5-95**(P. 1271)*

HOUSE FILE 166

H-3486

1 Amend the amendment, H-3327, to House File 166 as
 2 follows:
 3 1. Page 1, by inserting after line 3 the
 4 following:
 5 "Section 1. NEW SECTION. 6A.15 GIVINGS.
 6 To the extent that the state is required by a
 7 statute, rule, executive order, or policy to pay a
 8 person on account of any effect on the value of land
 9 as a result of official government action, including
 10 but not limited to, pollution control, worker
 11 protection, or public health and safety rules, when
 12 the public payment has not been determined to be
 13 constitutionally required by a court, the amount of
 14 any such payment shall be reduced in whole or in part
 15 by the amount by which the value of the land has been
 16 increased by any act of the state, including but not
 17 limited to, public funding for highways, schools, and
 18 other public facilities; deductions or credits
 19 reducing taxes; state grant programs; or state
 20 technical or business assistance programs."
 21 2. Page 3, by inserting after line 49 the
 22 following:
 23 "_____. Title page, line 3, by inserting after the
 24 word "action" the following: "or other action,"."
 By SHOULTZ of Black Hawk

H-3486 FILED MARCH 27, 1995

Lost 3-29-95 (p. 1073)

HOUSE FILE 166

H-3487

1 Amend the amendment, H-3327, to House File 166 as
 2 follows:
 3 1. Page 2, by inserting after line 17 the
 4 following:
 5 "() An action to alleviate or remove a
 6 demonstrable harm to the public health and safety,
 7 including any use that is a menace to the public
 8 health, welfare, or safety; that is structurally
 9 unsafe; is unsanitary; that constitutes a fire hazard;
 10 that constitutes a hazard to the public health,
 11 welfare, or safety because of inadequate maintenance,
 12 dilapidation, or abandonment; or which is otherwise
 13 dangerous to human life."
 14 2. By renumbering as necessary.

By SHOULTZ of Black Hawk

H-3487 FILED MARCH 27, 1995

*Out of Order
3-29-95
(p. 1074)*

HOUSE FILE 166

H-3488

1 Amend the amendment, H-3327, to House File 166 as
2 follows:
3 1. Page 2, by striking lines 44 through 49 and
4 inserting the following: "shall then indicate the
5 amount of the recovery. The amount shall be based on
6 the reduction in the fair market value that plaintiff
7 is entitled to recover offset by the amount that the
8 property was improved due to all benefits conferred
9 upon the property by state and local governments until
10 suit was brought and any economic losses sustained by
11 the plaintiff due to the inverse condemnation from the
12 time that the government action is taken until suit
13 was brought. The reduction".
14 2. Page 3, line 5, by inserting after the word
15 "taking." the following: "The increase in the fair
16 market value of the private farm property due to
17 benefits conferred upon the property by state and
18 local governments shall be shown by specifying the
19 fair market value of the plaintiff's private farm
20 property prior to each benefit being conferred and by
21 indicating the percentage increase in value caused by
22 the benefit being conferred."
23 3. Page 3, line 26, by inserting after the word
24 "property" the following: "offset by the percentage
25 increase in the fair market value of the property due
26 to all benefits conferred upon the property by state
27 and local governments".

By SHOULTZ of Black Hawk

H-3488 FILED MARCH 27, 1995

Lost 4-5-95 (P. 1272)

HOUSE FILE 166

H-3505

1 Amend the amendment, H-3327, to House File 166, as
2 follows:
3 1. Page 3, line 13, by striking the word "forty-
4 five" and inserting the following: "ninety".
By HOLVECK of Polk

H-3505 FILED MARCH 27, 1995

WITHDRAWN

*4-5-95**(P. 1272)*

HOUSE FILE 166

H-3506

1 Amend the amendment, H-3327, to House File 166 as
2 follows:

3 1. By striking page 1, line 4, through page 3,
4 line 49, and inserting the following:

5 "Section 1. INTERIM STUDY -- REGULATION OF
6 PRIVATE PROPERTY.

7 The legislative council is requested to establish
8 an interim study committee to consider issues related
9 to the effects of state governmental regulations, and
10 especially rules adopted by state agencies, upon the
11 fair market value of private property and restrictions
12 upon the uses of that property, including but not
13 limited to property which is used for agricultural
14 purposes. The committee shall consider the extent to
15 which state regulations may trigger constitutional
16 taking provisions requiring compensation be paid to
17 the owner under either the fifth or fourteen
18 amendments to the Constitution of the United States,
19 or Article I, section 18, of the Constitution of the
20 State of Iowa, and the extent to which owners of
21 private property should be compensated, if regulation
22 restricts an interest in property, but does not
23 trigger a constitutional taking. The committee shall
24 review methods to encourage agencies to establish
25 procedures to minimize the impact of regulations upon
26 private property owners while carrying out purposes
27 and goals of the regulations in a practical and cost-
28 effective manner. The committee shall report to the
29 general assembly not later than January 1, 1996. The
30 report shall contain findings and may include
31 recommendations, including legislative proposals."

32 2. Title page, by striking lines 2 through 4 and
33 inserting the following: "private property owners due
34 to constitutional takings of or use restrictions on
35 private property through governmental action by
36 providing for a study and a report to the general
37 assembly."

By WEIGEL of Chickasaw

H-3506 FILED MARCH 27, 1995

Last 4-5-95
(P. 1274)

HOUSE FILE 166

H-3507

1 Amend the amendment, H-3327, to House File 166, as
2 follows:

3 1. Page 3, line 13, by striking the word "forty-
4 five" and inserting the following: "sixty".

By HOLVECK of Polk

H-3507 FILED MARCH 27, 1995

Adapted
4-5-95
(P. 1273)

HOUSE FILE 166

H-3508

- 1 Amend the amendment, H-3327, to House File 166 as
- 2 follows:
- 3 1. Page 2, by striking line 38 and inserting the
- 4 following: "The action shall be heard and decided by
- 5 a district judge."

By HOLVECK of Polk

H-3508 FILED MARCH 27, 1995

WITHDRAWN 4.5-95

HOUSE FILE 166

H-3509

- 1 Amend the amendment, H-3327, to House File 166, as
- 2 follows:
- 3 1. Page 3, by striking lines 39 through 46.
- 4 2. By renumbering as necessary.

By MORELAND of Wapello

H-3509 FILED MARCH 27, 1995

*out of order 3-29-95**(P. 1074)*

HOUSE FILE 166

H-3544

- 1 Amend the amendment, H-3327, to House File 166 as
- 2 follows:
- 3 1. Page 2, line 22, by striking the words
- 4 "suitable for use" and inserting the following:
- 5 "used".

By SCHRADER of Marion

H-3544 FILED MARCH 28, 1995

Lost 3-29-95
(P. 1078)

HOUSE FILE 166

H-3578

- 1 Amend the amendment, H-3327, to House File 166, as
- 2 follows:
- 3 1. Page 2, line 32, by striking the words "the
- 4 private" and inserting the following: "private".
- 5 2. Page 2, line 33, by inserting after the word
- 6 "property" the following: ", including all real
- 7 property contiguous to the impacted parcel owned by a
- 8 person claiming that a taking has occurred,".

By SCHRADER of Marion

H-3578 FILED MARCH 29, 1995

LOST
(P. 1078)

HOUSE FILE 166

H-3510

1 Amend the amendment, H-3327, to House File 166 as
2 follows:

3 1. By striking page 1, line 4, through page 3,
4 line 49, and inserting the following:

5 "Section 1. NEW SECTION. 17B.1 SHORT TITLE.

6 This chapter shall be known and may be cited as the
7 "Agricultural Property Protection Act."

8 Sec. 2. NEW SECTION. 17B.2 DEFINITIONS.

9 As used in this section, unless the context
10 otherwise requires:

11 1. "Buffer zone" means a permanent area, including
12 an erosion control structure or an erosion control
13 practice, which separates agricultural uses from a
14 water source, in order to mitigate the effects of
15 concentrated runoff on water quality.

16 2. "Department" means the department of natural
17 resources as created pursuant to section 455A.2.

18 3. "Owner" means a person other than a
19 governmental entity, who holds a fee simple interest
20 in real farm property.

21 4. "Proposed departmental action" means an action
22 which an agency proposes to initiate by filing a
23 notice of intended action pursuant to section 17A.4,
24 or by issuing an order pursuant to chapter 17A,
25 regardless of whether the action has general or
26 specific applicability, if the action implements,
27 interprets, or prescribes law or policy, and is within
28 the department's statutory authority.

29 5. "Real farm property" means real property which
30 is privately owned and used for agricultural purposes.

31 Sec. 3. NEW SECTION. 17B.3 LEGISLATIVE FINDINGS
32 AND PURPOSE.

33 It is the policy of this state that an action taken
34 by the department which affects real property which is
35 privately owned and used for agricultural purposes is
36 subject to the full protection afforded by the
37 Constitution of the United States and the Constitution
38 of the State of Iowa. The general assembly intends
39 that the department follow all procedures required to
40 ensure constitutional protection of real farm property
41 rights and reduce the burden on citizens, local
42 governments, and this state caused by actions
43 affecting real farm property, while also meeting its
44 obligation to protect the quality of this state's
45 natural environment.

46 The purpose of this chapter is to establish an
47 orderly, consistent process that better enables the
48 department to evaluate how a potential administrative
49 action may affect real farm property. It is not the
50 purpose of this chapter to reduce or expand the scope

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Page 2

1 of private property protection provided in the
2 Constitution of the United States and the Constitution
3 of the State of Iowa, as those provisions have been
4 and may in the future be interpreted by state and
5 federal courts of competent jurisdiction.

6 Sec. 4. NEW SECTION. 17B.4 ACTIONS REQUIRING
7 DEPARTMENTAL ASSESSMENT.

8 1. If the department proposes taking any action
9 that is reasonably likely to deprive an owner of a fee
10 simple interest in real farm property, or deprives an
11 owner of all productive use of the real farm property,
12 the department shall prepare an assessment that
13 includes all of the following:

14 a. An identification of the risk created by the
15 use of the owner's real farm property to the public,
16 and a description of the goal achieved by the proposed
17 departmental action, which may include advancing a
18 public benefit or preventing a risk to the public
19 welfare, including preservation of the natural
20 environment, or protection of public health or safety.

21 b. The anticipated effects, if any, on the public,
22 including other persons holding an interest in real
23 property, or on the natural environment, if the
24 department does not take the proposed departmental
25 action.

26 c. An explanation justifying why the proposed
27 departmental action advances a public benefit or
28 prevents a risk to the public welfare.

29 d. An explanation justifying why the proposed
30 departmental action is likely to result in requiring
31 the state, under applicable constitutional principles
32 and judicial opinions, to compensate the owner of the
33 real farm property, including a description of how the
34 proposed departmental action affects the use or value
35 of the real farm property.

36 e. Alternatives, if any, to the proposed
37 departmental action that the department believes will
38 fulfill the legal obligations of the department,
39 reduce the impact on the real farm property, and
40 reduce the likelihood of requiring compensation.

41 f. An estimate of the cost to the state for
42 compensation in the event such compensation is
43 required.

44 2. An assessment is not required under this
45 section, unless the Iowa supreme court, the Iowa court
46 of appeals, or the United States supreme court has,
47 under similar factual circumstances, required
48 compensation to be paid.

49 3. If the department finds an immediate threat to
50 human health or safety that constitutes an emergency

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1 and requires an immediate response, the assessment
2 required by this section may be delayed until after
3 the emergency response is completed. As used in this
4 subsection, "emergency response" includes a rule of an
5 emergency nature adopted under section 17A.4,
6 subsection 2, or made effective under the provisions
7 of section 17A.5, subsection 2, paragraph "b", or an
8 order issued by the department requiring the owner to
9 cease and desist. The rule or order shall provide an
10 explanation for the emergency response.

11 4. This section shall not apply to a proposed
12 departmental action which is one of the following:

13 a. A licensing or permitting condition,
14 requirement, or limitation involving the use of real
15 farm property, required pursuant to state or federal
16 statute, a federal regulation, or a rule adopted
17 pursuant to chapter 17A.

18 b. The adoption of rules under chapter 17A that is
19 reasonably likely to limit the use of real farm
20 property, required pursuant to a state or federal
21 statute, a federal regulation, or a rule adopted
22 pursuant to chapter 17A.

23 c. An enforcement action carried out by the
24 department pursuant to a state or federal statute, a
25 federal regulation, or a rule adopted pursuant to
26 chapter 17A.

27 5. An assessment made pursuant to this section is
28 a public record as provided in chapter 22.

29 Sec. 5. NEW SECTION. 17B.5 SPECIAL REQUIREMENTS
30 -- CREATION OF BUFFER ZONES.

31 1. If a proposed departmental action requires the
32 creation of a buffer zone, the department shall
33 prepare a report which shall identify the public
34 purpose or policy which is serviced by the creation of
35 the buffer zone and how the creation and maintenance
36 of the buffer zone will promote or meet that public
37 purpose or policy. The report shall be in addition to
38 any other assessment required pursuant to this
39 chapter.

40 2. If the department finds an immediate threat to
41 human health or safety that constitutes an emergency
42 and requires an immediate response, the report
43 required by this section may be delayed until after
44 the emergency response is completed. As used in this
45 subsection, "emergency response" includes a rule of an
46 emergency nature adopted under section 17A.4,
47 subsection 2, or made effective under the provisions
48 of section 17A.5, subsection 2, paragraph "b", or an
49 order issued by the department requiring the owner to
50 cease and desist. The rule or order shall provide an

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1 explanation for the emergency response.

2 3. An assessment made pursuant to this section is
3 a public record as provided in chapter 22.

4 Sec. 6. NEW SECTION. 17B.6 REMEDIES.

5 If a court determines that an owner is entitled to
6 be compensated under the Constitution of the United
7 States or the Constitution of the State of Iowa,
8 because of a departmental action affecting real farm
9 property, the court shall order the department to pay
10 the owner court costs, including reasonable attorney
11 fees, if the court determines either of the following
12 applies:

13 1. The department failed to perform an assessment
14 required pursuant to section 17B.4.

15 2. The department completed the assessment
16 required in section 17B.4, but unreasonably failed to
17 conclude that its action was reasonably likely to
18 require compensation to be paid to the owner.

19 Sec. 7. APPLICABILITY DATE. This Act applies to
20 governmental action taken or proposed on or after
21 ninety days following the effective date of this Act."

22 2. Title page, by striking lines 1 through 4 and
23 inserting the following: "An Act relating to property
24 used for farming which is impacted by government
25 action and providing for the Act's applicability."

By WEIGEL of Chickasaw

H-3510 FILED MARCH 27, 1995

*Not Hermone 4-5-95
(P. 1278)*

HOUSE FILE 166

H-3511

1 Amend the amendment, H-3327, to House File 166 as
2 follows:

3 1. By striking page 1, line 4, through page 3,
4 line 49, and inserting the following:

5 ""Section 1. NEW SECTION. 17A.30 PRIVATE FARM
6 PROPERTY REGULATORY FLEXIBILITY ANALYSIS.

7 1. For the purpose of this section, unless the
8 context otherwise requires:

9 a. "Farmer" means a person who owns private farm
10 property.

11 b. "Inverse condemnation" means the reduction in
12 the fair market value of private farm property by more
13 than fifty percent due to a proposed rule.

14 c. "Private farm property" means any real
15 property, including farm dwellings, improvements,
16 buildings, and structures, in this state owned by a
17 person other than the state, a political subdivision,
18 or other governmental entity which is used in
19 connection with the production of agricultural
20 commodities, including, but not limited to, the
21 raising, harvesting, drying, or storage of crops; the
22 maintenance of pasture or grassland; the care or
23 feeding of livestock including poultry; the production
24 of eggs or milk; and the production of fruit or other
25 horticultural crops.

26 2. If an agency proposes a rule which may impact
27 private farm property as an inverse condemnation, the
28 agency shall comply with the additional notice
29 provisions of subsection 3 and the analysis
30 requirements of subsection 4.

31 3. If a proposed rule may impact private farm
32 property as an inverse condemnation, the agency shall
33 include in its notice of intended agency action
34 pursuant to section 17A.4, in the Iowa administrative
35 bulletin that the proposed rule-making may be an
36 inverse condemnation. The agency shall notify farm
37 organizations who have registered with the agency
38 requesting notification.

39 4. An agency shall issue a regulatory flexibility
40 analysis of a proposed rule, if the agency finds that
41 the proposed rule may impact private farm property as
42 an inverse condemnation, or if within twenty days
43 after the published notice of the proposed rule
44 adoption, a written request for the analysis is filed
45 with the appropriate agency by the administrative
46 rules review committee, the governor, a political
47 subdivision, at least twenty-five farmers, or a
48 registered organization representing at least twenty-
49 five farmers.

50 The agency in its regulatory flexibility analysis

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1 shall consider each of the following methods for
2 reducing the impact of the proposed rule on private
3 farm property:

4 a. Establishing less stringent compliance or
5 reporting requirements in the rule for farmers.

6 b. Establishing less stringent schedules or
7 deadlines in the rule for compliance or reporting
8 requirements for farmers.

9 c. Consolidating or simplifying the rule's
10 compliance or reporting requirements for farmers.

11 d. Establishing performance standards to replace
12 design or operational standards in the rule for
13 private farm property.

14 e. Exempting private farm property from any or all
15 requirements of the rule.

16 f. The nature of any reports and the estimated
17 cost of their preparation by farmers which would be
18 required to comply with the rule.

19 g. The nature and estimated cost of other measures
20 or investments that would be required by farmers to
21 comply with the rule.

22 h. The nature and estimated cost of any
23 professional, legal, consulting, or accounting
24 services which farmers would incur to comply with the
25 rule.

26 i. The probable costs to the agency and to any
27 other agency of the implementation and enforcement of
28 the proposed rule and any anticipated effect on state
29 revenue.

30 j. A comparison of the probable costs and benefits
31 of the proposed rule to the probable costs and
32 benefits of inaction.

33 k. A determination of whether less costly methods
34 or less intrusive methods exist for achieving the
35 purpose of the proposed rule.

36 l. A description of any alternative methods for
37 achieving the purpose of the proposed rule that were
38 seriously considered by the agency and the reasons
39 they were rejected in favor of the proposed rule.

40 5. A concise summary of the regulatory flexibility
41 analysis must be published in the Iowa administrative
42 bulletin twenty days prior to the adoption of the
43 proposed rule. The summary shall contain the place
44 where and the time when interested persons may make an
45 oral presentation on the analysis; and where persons
46 may obtain a full text of the analysis for the cost of
47 reproduction. If the agency has made a good faith
48 effort to comply with the requirements of subsections
49 3 and 4, the rule may not be invalidated on the ground
50 that the contents of the regulatory flexibility

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Page 3

1 analysis are insufficient or inaccurate.

2 6. The agency shall reduce the impact by using a
3 method provided or requested under subsection 4 if it
4 finds that the methods are legal and feasible in
5 meeting the statutory objectives which are the basis
6 of the proposed rule.

7 Sec. 2. Section 17A.32, Code 1995, is amended to
8 read as follows:

9 17A.32 TIME LIMIT APPLICABLE TO EMERGENCY RULES.

10 A rule of an emergency nature adopted under section
11 17A.4, subsection 2, or made effective under the
12 provisions of section 17A.5, subsection 2, paragraph
13 b, is not subject to the provisions of section 17A.30
14 or 17A.31 until ninety days have elapsed from the day
15 of the emergency rule's publication. If subsections 3
16 and 4 of section 17A.30 or subsections 3 and 4 of
17 17A.31 have not been complied with within this ninety-
18 day period, the rule is void.

19 Sec. 3. Section 17A.33, Code 1995, is amended to
20 read as follows:

21 17A.33 REVIEW BY ADMINISTRATIVE RULES REVIEW
22 COMMITTEE.

23 The administrative rules review committee shall
24 review existing rules, as time permits, to determine
25 if there are adverse or beneficial effects from these
26 rules. The committee shall give a high priority to
27 rules that are referred to it by twenty-five or more
28 farmers or a registered farm organization as provided
29 in section 17A.30 or a small business as defined in
30 section 17A.31. The review of these rules shall be
31 forwarded to the appropriate standing committees of
32 the house and senate."

By BERNAU of Story

H-3511 FILED MARCH 27, 1995

Lot 4-5-95

(P. 1280)

S-2/29/96 No Pass
S-3/4/96 Do Pass
S-4/1/96 Agriculture

HOUSE FILE 166
BY MERTZ

(COMPANION TO SF 58
BY COMMITTEE ON AGRICULTURE)

(As Amended and Passed by the House April 5, 1995)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to procedures and criteria for recovery by
2 private property owners due to inverse condemnation of real
3 property by state government action and providing an
4 applicability date.

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

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All New Language by the House

1 Section 1. NEW SECTION. 651A.1 WHO MAY BRING ACTION.

2 An action to recover just compensation for an inverse
3 condemnation of private farm property may be brought by any
4 person having an ownership interest in the private farm
5 property.

6 Sec. 2. NEW SECTION. 651A.2 DEFINITIONS.

7 As used in this chapter, unless the context otherwise
8 requires:

9 1. "Constitutional taking" means that due to a government
10 action, private farm property is taken in such a manner that
11 compensation to the owner is required by either the fifth or
12 fourteenth amendment to the Constitution of the United States,
13 or article I, section 18, of the Constitution of the State of
14 Iowa.

15 2. "Farm operation" means a condition or activity which
16 occurs on a farm in connection with the production of
17 agricultural commodities, including, but not limited to, the
18 raising, harvesting, drying, or storage of crops; the
19 maintenance of pasture or grassland; the care or feeding of
20 livestock including poultry; the handling or transportation of
21 crops or livestock including poultry; the production of eggs
22 or milk; the production of fruit or other horticultural crops;
23 the treatment or disposal of wastes resulting from livestock;
24 the creation of noise, odor, dust, or fumes; the operation of
25 machinery and irrigation pumps; ground and aerial seeding and
26 spraying; the application of pesticides as defined in section
27 206.2; and the employment and use of labor.

28 3. a. "Government action" means any of the following:

29 (1) Rules of a state agency adopted pursuant to chapter
30 17A that, if enforced against private farm property, would
31 directly limit the use of private farm property.

32 (2) Conditions, requirements, or limitations for licenses
33 or permits issued or granted by a state agency which, if
34 applied to private farm property, directly limits the use of
35 the private farm property.

1 (3) Required dedications or exactions from owners of
2 private farm property by a state agency.

3 b. "Government action" does not include any of the
4 following:

5 (1) Activities as to which the power of eminent domain is
6 formally exercised.

7 (2) The repeal or amendment of rules which results in the
8 discontinuation of government programs or changes to rules
9 which lessen the interference with the use of private farm
10 property.

11 (3) Law enforcement activities involving seizure or
12 forfeiture of private farm property for violations of law or
13 for use as evidence in criminal proceedings.

14 (4) Orders that are authorized by statute, are issued by a
15 state agency or court, and result from the violation of a
16 state law.

17 (5) A rule or regulation required to be adopted by the
18 state pursuant to federal law.

19 (6) A rule, regulation, or requirement adopted by a
20 municipality, as defined by section 670.1.

21 (7) A rule, regulation, or requirement adopted by a county
22 including, but not limited to, county legislation as provided
23 in section 331.302.

24 (8) The sale of private farm property subject to a lien
25 held by a governmental entity.

26 (9) An action involving private parties which is conducted
27 under state law, or enforced by an officer of a governmental
28 entity, including but not limited to, a proceeding to enforce
29 a debt against private farm property under chapter 624, to
30 forfeit a contract to purchase private farm property under
31 chapter 656, or to otherwise levy on, execute on, seize, or
32 attach private farm property.

33 (10) An easement granted pursuant to section 308.4.

34 (11) The reduction or elimination of a benefit directly or
35 indirectly conferred upon an owner which is not related to the

1 use of the private farm property and resulting from a
2 government action, including but not limited to, the removal
3 of a facility or infrastructure.

4 (12) An action which constitutes the exercise of the
5 state's police power to prevent a demonstrable harm to the
6 public health and safety, including any use of private farm
7 property that is structurally unsafe; that constitutes a fire
8 hazard; that constitutes a hazard to the public health or
9 safety because of inadequate maintenance, dilapidation, or
10 abandonment; or that is otherwise dangerous to human life.

11 4. "Inverse condemnation" means an action to recover just
12 compensation for a constitutional or regulatory taking of
13 private farm property.

14 5. "Private farm property" means any real property
15 suitable for use in a farm operation, including farm
16 dwellings, improvements, and buildings or structures
17 incidental to farm operations, in this state that is owned by
18 a person other than the state, a political subdivision, or
19 other governmental entity and if the property is protected
20 pursuant to either the fifth or fourteenth amendment to the
21 Constitution of the United States, or article I, section 18,
22 of the Constitution of the State of Iowa.

23 6. "Regulatory taking" means government action that
24 reduces the fair market value of the private farm property by
25 more than fifty percent.

26 Sec. 3. NEW SECTION. 651A.3 JURISDICTION.

27 An action for inverse condemnation may be brought in the
28 district court sitting in the county where the private farm
29 property alleged to be subject to an inverse condemnation is
30 located. The action shall be tried by ordinary proceedings.

31 Sec. 4. NEW SECTION. 651A.4 VERDICT -- SPECIAL.

32 The verdict shall initially indicate whether the plaintiff
33 is entitled to recover for an inverse condemnation of the
34 plaintiff's private farm property. If the plaintiff is
35 entitled to recover, the verdict shall then indicate the

1 amount of the reduction in the fair market value of the
2 plaintiff's private farm property due to the inverse
3 condemnation and any economic losses sustained by the
4 plaintiff due to the inverse condemnation from the time the
5 government action is taken until suit was brought. The
6 reduction in fair market value shall be shown by specifying
7 the fair market value of the plaintiff's private farm property
8 prior to or absent the constitutional or regulatory taking and
9 by indicating the percentage reduction in value caused by the
10 constitutional or regulatory taking.

11 Sec. 5. NEW SECTION. 651A.5 JUDGMENT.

12 1. If the special verdict indicates the plaintiff is not
13 entitled to recover, the district court shall enter judgment
14 for the defendant.

15 2. If the special verdict indicates the plaintiff is
16 entitled to recover, the district court shall enter an order
17 acknowledging the special verdict. Within sixty days
18 following the expiration of time for appeal or issuance of
19 procedendo following appeal, the defendant shall file a notice
20 of election with the district court indicating whether or not
21 the defendant will agree to rescind the government action
22 constituting the constitutional or regulatory taking. If the
23 defendant elects to agree to rescind the government action,
24 the district court shall enter judgment accordingly. However,
25 if the defendant rescinds the government action, the damages
26 shall be limited only to the actual and demonstrable economic
27 losses incurred by the plaintiff as a result of the government
28 action during the period when the government action was in
29 effect. If the defendant does not elect to rescind the
30 government action, the district court shall enter a judgment
31 for damages equal to the percentage reduction in the fair
32 market value of the property. In a case where judgment for
33 the full fair market value is entered and paid, the defendant
34 shall obtain title to the property.

35 The district court shall order the payment of all court

1 costs and reasonable attorney fees to any party successfully
2 establishing an inverse condemnation pursuant to this chapter.

3 Sec. 6. NEW SECTION. 651A.6 REMEDY NOT EXCLUSIVE.

4 This chapter does not prevent a party from seeking to
5 recover just compensation for a constitutional taking in any
6 other manner allowed by law.

7 Sec. 7. NEW SECTION. 651A.8 APPLICABILITY.

8 This chapter applies only to government action adopted or
9 enforced on or after July 1, 1995.

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