

FEB 27 1996
TRANSPORTATION

HOUSE FILE 2373
BY GRUBBS

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

A BILL FOR

1 An Act providing that the ownership of real property is a
2 fundamental right, requiring additional procedural safeguards
3 in condemnation proceedings, and providing damages for willful
4 or knowing failure to act in good faith.

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

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HF 2373

1 Section 1. Section 6A.1, Code 1995, is amended to read as
2 follows:

3 6A.1 EXERCISE OF POWER BY STATE.

4 Proceedings may be instituted and maintained by the state
5 of Iowa, or for the use and benefit thereof, for the
6 condemnation of such private property as may be necessary for
7 any public improvement which the general assembly has
8 authorized to be undertaken by the state, and for which an
9 available appropriation has been made. The state shall have a
10 duty to pursue the alternative condemnation that is least
11 restrictive to the property owner. The executive council
12 shall institute and maintain such proceedings in case
13 authority to so do be is not otherwise delegated.

14 Sec. 2. NEW SECTION. 6A.1A FUNDAMENTAL RIGHT TO
15 OWNERSHIP.

16 The general assembly finds that the right to own property
17 is a fundamental right that may only be abridged by a
18 compelling state interest.

19 Sec. 3. Section 6B.3, Code Supplement 1995, is amended by
20 adding the following new subsection:

21 NEW SUBSECTION. 8. Notwithstanding any other provision to
22 the contrary, the chief judge shall approve the application
23 only if the applicant has shown in the application that a
24 compelling state interest would be served by condemnation of
25 the property.

26 Sec. 4. Section 6B.7, Code 1995, is amended to read as
27 follows:

28 6B.7 COMMISSIONERS TO QUALIFY.

29 Before proceeding with the assessment all commissioners
30 shall qualify by disclosing their names, addresses,
31 occupations, and potential conflicts of interest and by filing
32 with the sheriff a written oath that they will to the best of
33 their ability faithfully and impartially assess said damages
34 and make written report to the sheriff.

35 Sec. 5. Section 6B.8, Code 1995, is amended to read as

1 follows:

2 6B.8 NOTICE OF ASSESSMENT AND COMMISSION MEMBERSHIP.

3 The applicant, or the owner or any lienholder or
4 encumbrancer of any land described in the application, may, at
5 any time after the appointment of the commissioners, have the
6 damages to the lands of any such owner assessed by giving the
7 other party, if a resident of this state, ten days' notice, in
8 writing. Such notice shall specify the day and the hour when
9 the commissioners will view the premises, and be served in the
10 same manner as original notices.

11 The chief judge of the judicial district shall notify the
12 landowner, or any lienholder or encumbrancer, in writing, not
13 less than ten days prior to the assessment, of the names,
14 addresses, occupations, and potential conflicts of interest of
15 the members of the compensation commission.

16 Sec. 6. NEW SECTION. 6B.34A DUTY OF GOOD FAITH --
17 DEPARTMENT OF TRANSPORTATION.

18 The state department of transportation shall have a duty to
19 act in good faith when complying with the provisions of this
20 chapter. A landowner who has been aggrieved by a willful or
21 knowing failure by the department to act in accordance with
22 this duty shall have an action for an award of treble damages.

23 EXPLANATION

24 This bill provides that property ownership of real property
25 is a fundamental right that can only be abridged by a
26 governmental entity for a compelling governmental interest.
27 It adds additional safeguards for the property owner when the
28 government is taking the owner's property.

29 Article I, section 18, of the Constitution of the State of
30 Iowa provides that "[p]rivate property shall not be taken for
31 public use without just compensation first being made...."
32 This provision provides constitutional protection from
33 governmental takings of property by allowing for taking of
34 property only when the property is taken for a public use and
35 requires that just compensation be provided for doing so.

1 Chapters 6A and 6B of the Iowa Code that are amended in this
2 bill set forth the procedure that a governmental entity must
3 follow when taking real property under its power of eminent
4 domain.

5 The bill imposes a duty on the state to pursue the
6 alternative condemnation that is least restrictive to the
7 property owner.

8 Current law requires that eminent domain proceedings be
9 instituted by a written application filed with the chief judge
10 of the judicial district of the county in which the land
11 sought to be condemned is located. This bill requires that
12 the applicant must show a compelling state interest before the
13 condemnation application is approved by the chief judge. The
14 bill requires that members of the compensation commission
15 chosen to assess the damages to the property be required to
16 disclose their names, addresses, occupations, and potential
17 conflicts of interest and that the chief judge notify the
18 landowner, or any lienholder or encumbrancer, in writing, at
19 least 10 days before the assessment, of the names, addresses,
20 occupations, and potential conflicts of interest of the
21 members of the compensation commission.

22 Finally, the bill imposes a duty upon the state department
23 of transportation to act in good faith when complying with the
24 eminent domain procedures in chapter 6B and provides that a
25 landowner who has been aggrieved by a willful or knowing
26 failure by the department to act in accordance with the duty
27 shall have an action for treble damages.

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