

FILED JAN 24 1995
1/24/95 Agriculture

SENATE FILE 58
BY COMMITTEE ON AGRICULTURE

(SUCCESSOR TO SSB 16)

Passed Senate, Date _____ Passed House, 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:

6
7

SENATE FILE 58

S-3039

1 Amend Senate File 58 as follows:

2 1. Page 1, by inserting after line 21 the
3 following:

4 "() An improvement to real property for the use
5 and benefit of the public which affects the fair
6 market value of private property, including but not
7 limited to the construction or erection of
8 infrastructure such as a highway or a public facility
9 such as a sanitary landfill, infectious waste disposal
10 facility, sewage treatment plant, or hospital."
11 2. By renumbering as necessary.

By ANDY MCKEAN

S-3039 FILED FEBRUARY 8, 1995

18
19
20
21
22
23

S.F. 58

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.

33

34

35

SENATE FILE 58
FISCAL NOTE

A fiscal note for Senate File 58 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.

Senate File 58 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 SF 58.

Fiscal Analysis:

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 caseload as a result of the adoption of SF 58. Additionally, in FY 1997, one additional staff attorney will be required, increasing the total estimated cost to \$220,000.

Sources:

Department of Justice

(LSB 1568SV, LAM)

FILED JANUARY 30, 1995

BY DENNIS PROUTY, FISCAL DIRECTOR

Priebe - Chair
McLaren
Husak

SSB-16

Succeeded By
Agriculture
SE/HE
SENATE FILE 58

BY (PROPOSED COMMITTEE ON
AGRICULTURE BILL BY
CHAIRPERSON PRIEBE)

Passed Senate, Date _____ Passed House, 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:

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

1984

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.

33

34

35