

FILED FEB 20 1997

SENATE FILE 185  
BY REHBERG

(COMPANION TO 1939HH BY KREMER)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

A BILL FOR

1 An Act concerning the condemnation of private property by owners  
2 of land without a public way to the land.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
4

SENATE FILE 185

S-3128

1 Amend Senate File 185 as follows:  
2 1. Page 1, by striking lines 8 and 9 and  
3 inserting the following: "be located on a division,  
4 subdivision or "forty" line, or immediately adjacent  
5 thereto, and along the line which is the".  
6 2. Page 1, by striking lines 27 through 29 and  
7 inserting the following:  
8 "A public way condemned under this subsection shall  
9 not be considered an existing public road in  
10 subsequent condemnations to provide a public way for  
11 access to an existing public road."  
12 3. Page 2, line 4, by inserting after the figure  
13 "679A." the following: "On appeal, the condemner  
14 shall establish that the interest of the condemner in  
15 establishing the public way is greater than the  
16 interest of the present owner or lessee of the  
17 condemned land."

By KITTY REHBERG

S-3128 FILED MARCH 17, 1997

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1 Section 1. Section 6A.4, subsection 2, Code 1997, is  
2 amended to read as follows:

3 2. Owners of land without a way to the land. Upon the  
4 owner or lessee of lands, which have no public or private way  
5 to the lands, for the purpose of providing a public way, not  
6 exceeding less than forty feet in width, which will connect  
7 with an existing public road. The condemned public way shall  
8 be located on-a-division, subdivision or "forty"-line, or  
9 immediately adjacent thereto, and along the line which is the  
10 nearest feasible route to an existing public road, or along a  
11 route established for a period of ten years or more by an  
12 easement of record or by use and travel to and from the  
13 property by the owner and the general public. The public way  
14 shall not interfere with buildings, orchards, or cemeteries.  
15 When passing through enclosed lands, the public way shall be  
16 fenced on-both-sides-by-the-condemner-upon-request-of-the  
17 owner-of-the-condemned-land only at the request of the  
18 adjacent owner or lessee, with the costs of erection and  
19 maintenance of the fence being borne by the condemner, or the  
20 condemner's assignee. All fences erected pursuant to this  
21 subsection shall comply with the provisions of chapter 359A.

22 The condemner or the condemner's assignee, shall provide  
23 easement for access to the owner of property severed by the  
24 condemnation. The public way shall be maintained by the  
25 condemner or the condemner's assignee, and shall not be  
26 considered any part of the primary or secondary road systems.

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

30 The condemnation of a public way under this subsection  
31 shall be conducted in compliance with sections 6B.3 through  
32 6B.19, 6B.33, 306.50 through 306.54, 314.23, and 314.24, and  
33 the condemner shall pay the costs of compliance.

34 The appeal of condemnation proceedings under this  
35 subsection shall be conducted in compliance with sections

1 6B.19 through 6B.25, 6B.30, 6B.32, and 6B.34 through 6B.41.  
2 However, upon mutual agreement of the condemner and condemnee,  
3 appeal proceedings may be conducted through arbitration in  
4 compliance with chapter 679A.

5 EXPLANATION

6 This bill makes changes in the provisions permitting the  
7 condemnation of land for the purpose of providing an owner of  
8 land a public way to the land.

9 The bill eliminates the requirement that the public way, if  
10 it is to be located on the nearest feasible route to an  
11 existing public road, be located on, or adjacent to, a  
12 division, subdivision, or "forty" line.

13 The bill also provides that the public way be at least 40  
14 feet in width. Current law provides that the public way not  
15 exceed 40 feet in width.

16 The bill also provides that an owner or lessee of land  
17 adjacent to the public way can request that the public way be  
18 fenced and the cost of erecting and maintaining the fence  
19 shall be paid by the condemner. The bill also requires that  
20 the fence be erected pursuant to the requirements of chapter  
21 359A. Current law provides that the owner of condemned land  
22 can request the erection of a fence on both sides of the  
23 public way.

24 The bill eliminates the provision that a public way  
25 condemned pursuant to section 6A.4, subsection 2, shall not be  
26 considered an existing public road in subsequent condemnations  
27 to provide a public way for access to another existing public  
28 road.

29 The bill specifies the provisions of Code chapters 6B, 306,  
30 and 314, that apply to a condemnation proceeding to establish  
31 a public way, and provides that the condemner shall pay the  
32 cost of complying with the applicable provisions. The  
33 applicable provisions of Code chapter 306 relate to the soil  
34 and water conservation impact of a road, and the applicable  
35 provisions of Code chapter 314 relate to environmental and

1 historical protection concerning roads. The bill also  
2 specifies the provisions of Code chapter 6B that apply to an  
3 appeal of a condemnation proceeding but provides that the  
4 parties may, by mutual agreement, consent to arbitration.

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