

SENATE FILE 2042  
BY RIFE

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

A BILL FOR

1 An Act prohibiting the exercise of the power of eminent domain  
2 over certain real property for purposes of economic  
3 development.

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

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S.F. 2042

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

3 1. COUNTIES. Upon all counties for public purposes which  
4 are reasonable and necessary as an incident to the powers and  
5 duties conferred upon counties. However, a county shall not  
6 condemn real property assessed as agricultural land for  
7 taxation purposes if the purpose of the condemnation  
8 proceeding is to acquire real property for economic  
9 development.

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

12 6. CITIES. Upon all cities for public purposes which are  
13 reasonable and necessary as an incident to the powers and  
14 duties conferred upon cities. However, a city shall not  
15 condemn real property assessed as agricultural land for  
16 taxation purposes if the purpose of the condemnation  
17 proceeding is to acquire real property for economic  
18 development.

19 Sec. 3. Section 331 304, subsection 8, Code 1997, is  
20 amended to read as follows:

21 8. The power to take private property for public use shall  
22 only be exercised by counties for public purposes which are  
23 reasonable and necessary as an incident to the powers and  
24 duties conferred upon counties, and in accordance with  
25 chapters 6A and 6B. However, a county shall not condemn real  
26 property assessed as agricultural property for taxation  
27 purposes if the purpose of the condemnation proceeding is to  
28 acquire real property for economic development. Sections  
29 306.19 and 306.26 to 306.37 are also applicable to  
30 condemnation of right of way for secondary roads.

31 Sec. 4. Section 03.5, subsection 4, paragraph b,  
32 subparagraph (2), Code 1997, is amended to read as follows:

33 (2) If it is to be developed for nonresidential uses, the  
34 local governing body shall determine that such nonresidential  
35 uses are necessary and appropriate to fulfill the proper

1 growth and development of the community in accordance with  
2 sound planning standards and local community objectives. The  
3 acquisition may require the exercise of governmental action,  
4 as provided in this chapter, because of defective or unusual  
5 conditions of title, diversity of ownership, tax delinquency,  
6 improper subdivisions, outmoded street patterns, deterioration  
7 of site, economic disuse, unsuitable topography or faulty lot  
8 layouts, or because of the need for the correlation of the  
9 area with other areas of a municipality by streets and modern  
10 traffic requirements, or any combination of such factors or  
11 other conditions which retard development of the area.

12 However, a municipality shall not condemn an area of open land  
13 assessed as agricultural land for taxation purposes if the  
14 purpose of the condemnation proceeding is to acquire land for  
15 economic development.

16 Sec. 5. Section 403.7, Code 1997, is amended to read as  
17 follows:

18 403.7 CONDEMNATION OF PROPERTY.

19 A municipality shall have the right to acquire by  
20 condemnation any interest in real property, including a fee  
21 simple title thereto, which it may deem necessary for or in  
22 connection with an urban renewal project under this chapter.  
23 However, a municipality shall not condemn real property  
24 assessed as agricultural property for taxation purposes if the  
25 purpose of the condemnation proceeding is to acquire real  
26 property for economic development. A municipality may  
27 exercise the power of eminent domain in the manner provided in  
28 chapter 6B, and Acts amendatory to that chapter or  
29 supplementary to that chapter, or it may exercise the power of  
30 eminent domain in the manner now or which may be hereafter  
31 provided by any other statutory provisions for the exercise of  
32 the power of eminent domain. Property already devoted to a  
33 public use may be acquired in like manner. However, real  
34 property belonging to the state, or any political subdivision  
35 of this state, shall not be acquired without its consent, and

1 real property or any right or interest in the property owned  
2 by any public utility company, pipeline company, railway or  
3 transportation company vested with the right of eminent domain  
4 under the laws of this state, shall not be acquired without  
5 the consent of the company, or without first securing, after  
6 due notice to the company and after hearing, a certificate  
7 authorizing condemnation of the property from the board,  
8 commission or body having the authority to grant a certificate  
9 authorizing condemnation. In a condemnation proceeding, if a  
10 municipality proposes to take a part of a lot or parcel of  
11 real property, the municipality shall also take the remaining  
12 part of the lot or parcel if requested by the owner.

13 EXPLANATION

14 This bill prohibits cities and counties from acquiring by  
15 condemnation real property assessed as agricultural property  
16 for purposes of taxation if the purpose of the condemnation  
17 proceeding is to acquire the real property for economic  
18 development.

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SENATE FILE 2042

S-5111

1 Amend Senate File 2042 as follows:

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

4 "Section 1. Section 6B.14, unnumbered paragraph 1,  
5 Code 1997, is amended to read as follows:

6 The commissioners shall, at the time fixed in the  
7 aforesaid notices, view the land sought to be  
8 condemned and assess the damages which the owner will  
9 sustain by reason of the appropriation; and they shall  
10 file their written report with the sheriff. At the  
11 request of the condemner or the condemnee, the  
12 commission shall divide the damages into parts to  
13 indicate the value of any dwelling, the value of the  
14 land and improvements other than a dwelling, and the  
15 value of any additional damages. If the land is being  
16 condemned for economic development purposes, the  
17 commissioners, in assessing the damages, shall value  
18 the land according to the use of the land intended by  
19 the condemner. The appraisalment and return may be in  
20 parcels larger than forty acres belonging to one  
21 person and lying in one tract, unless the agent or  
22 attorney of the applicant, or the commissioners, have  
23 actual knowledge that the tract does not belong wholly  
24 to the person in whose name it appears of record; and  
25 in case of such knowledge, the appraisalment shall be  
26 made of the different portions as they are known to be  
27 owned."

28 2. Title page, line 1, by striking the word  
29 "prohibiting" and inserting the following:  
30 "restricting".

By ROD HALVORSON

S-5111 FILED MARCH 2, 1998

SENATE FILE 2042

S-5019

1 Amend Senate File 2042 as follows:

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

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

6 6A.4 RIGHT CONFERRED.

7 1. The right to take private property for public  
8 use is hereby conferred:

9 ~~1-~~ a. COUNTIES. Upon all counties for public  
10 purposes which are reasonable and necessary as an  
11 incident to the powers and duties conferred upon  
12 counties.

13 ~~2-~~ b. OWNERS OF LAND WITHOUT A WAY TO THE LAND.  
14 Upon the owner or lessee of lands, which have no  
15 public or private way to the lands, for the purpose of  
16 providing a public way, not exceeding forty feet in  
17 width, which will connect with an existing public  
18 road. The condemned public way shall be located on a  
19 division, subdivision or "forty" line, or immediately  
20 adjacent thereto, and along the line which is the  
21 nearest feasible route to an existing public road, or  
22 along a route established for a period of ten years or  
23 more by an easement of record or by use and travel to  
24 and from the property by the owner and the general  
25 public. The public way shall not interfere with  
26 buildings, orchards, or cemeteries. When passing  
27 through enclosed lands, the public way shall be fenced  
28 on both sides by the condemner upon request of the  
29 owner of the condemned land. The condemner or the  
30 condemner's assignee, shall provide easement for  
31 access to the owner of property severed by the  
32 condemnation. The public way shall be maintained by  
33 the condemner or the condemner's assignee, and shall  
34 not be considered any part of the primary or secondary  
35 road systems.

36 A public way condemned under this subsection shall  
37 not be considered an existing public road in  
38 subsequent condemnations to provide a public way for  
39 access to an existing public road.

40 ~~3-~~ c. OWNERS OF MINERAL LANDS. Upon all owners,  
41 lessees, or possessors of land, for a railway right of  
42 way thereto not exceeding one hundred feet in width  
43 and located wherever necessary or practical, when such  
44 lands have no railway thereto and contain coal, stone,  
45 gravel, lead, or other minerals and such railway is  
46 necessary in order to reach and operate any mine,  
47 quarry, or gravel bed on said land and transport the  
48 products thereof to market. Such right of way shall  
49 not interfere with buildings, orchards, or cemeteries,  
50 and when passing through enclosed lands, fences shall

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1 be built and maintained on both sides thereof by the  
2 party condemning the land and by that party's  
3 assignees. The jury, in the assessment of damages,  
4 shall consider the fact that a railway is to be  
5 constructed thereon.

6 4- d. CEMETERY ASSOCIATIONS. Upon any private  
7 cemetery or cemetery association which is incorporated  
8 under the laws of this state relating to corporations  
9 not for pecuniary profit, and having its cemetery  
10 located outside the limits of a city, for the purpose  
11 of acquiring necessary grounds for cemetery use or  
12 reasonable additions thereto. The right granted in  
13 this subsection shall not be exercised until the board  
14 of supervisors, of the county in which the land sought  
15 to be condemned is located, has, on written  
16 application and hearing, on such reasonable notice to  
17 all interested parties as it may fix, found that the  
18 land, describing it, sought to be condemned, is  
19 necessary for cemetery purposes. The association  
20 shall pay all costs attending such hearing.

21 5- e. SUBDISTRICTS OF SOIL AND WATER CONSERVATION  
22 DISTRICTS. Upon a subdistrict of a soil and water  
23 conservation district for land or rights or interests  
24 in the land as reasonable and necessary to carry out  
25 the purposes of the subdistrict.

26 6- f. CITIES. Upon all cities for public purposes  
27 which are reasonable and necessary as an incident to  
28 the powers and duties conferred upon cities.

29 2. "Public use" or "public purposes" does not  
30 include condemnation of private property by the state  
31 or a city or county or by an agency of the state or an  
32 agency of a city or county on behalf of a private,  
33 for-profit entity."

By JACK RIFE

S-5019 FILED FEBRUARY 4, 1998