

2/12/98 amend / *3-6-97 Nat. Res*
FILED MAR 6 1997 *W/S-5034*

REPRINTED

SENATE FILE 347
BY ANGELO

Passed Senate, Date ^(P.515) 3/3/98 Passed House, Date ^(P.1173) 4-1-98
Vote: Ayes 47 Nays 0 Vote: Ayes 97 Nays 0
Approved April 20, 1998

A BILL FOR

1 An Act relating to the disposal of public nuisances seized by the
2 department of natural resources.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4

SENATE FILE 347

S-5034

1 Amend Senate File 347 as follows:
2 1. Page 1, by striking lines 12 and 13 and
3 inserting the following: "An automobile shall not be
4 construed to be a public nuisance under this section."
By COMMITTEE ON NATURAL RESOURCES
AND ENVIRONMENT
MERLIN E. BARTZ, Chairperson

Adopted 3/3/98 (P.515)
S-5034 FILED FEBRUARY 12, 1998

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347

1 Section 1. Section 483A.32, Code 1997, is amended to read
2 as follows:

3 483A.32 PUBLIC NUISANCE.

4 Any device, contrivance, or material used to violate a rule
5 adopted by the commission, or any other provision of this
6 chapter or chapters 481A, 481B, 482, 484A, or 484B, is a
7 public nuisance, ~~and the~~ and may be condemned by the state.
8 ~~The~~ The director, and the director's officers, or any peace
9 officer, shall seize ~~such~~ the devices, contrivances, or
10 materials ~~so~~ used as a public nuisance, without warrant or
11 process, and deliver them to a magistrate having jurisdiction.
12 ~~An automobile shall not be construed to be a public nuisance~~
13 ~~under this section.~~

14 Sec. 2. Section 483A.33, Code 1997, is amended by striking
15 the section and inserting in lieu thereof the following:

16 483A.33 DISPOSITION OF PROPERTY SEIZED AS PUBLIC NUISANCE.

17 The disposition of property seized pursuant to section
18 483A.32 shall be conducted as follows:

19 1. The officer taking possession of property seized as a
20 public nuisance shall make a written inventory of the property
21 and deliver a copy of the inventory to the person from whom
22 the property was seized. The inventory shall include the name
23 of the person taking custody of the seized property, the date
24 and time of seizure, location of the seizure, and the name of
25 the seizing public agency. Property which has been seized
26 shall be safely secured and stored by the public agency which
27 caused its seizure unless directed otherwise by the county
28 attorney of the county where the property was seized or by the
29 attorney general.

30 2. a. The county attorney or attorney general shall file
31 with the clerk of the district court for the county in which
32 the property was seized a notice of condemnation which shall
33 include a description of the property claimed to be condemned
34 by the state, the grounds upon which the state claims that the
35 property has been condemned, the date and place of seizure,

1 and the name of the person from whom the property was seized.

2 b. The claim shall be filed not later than six months
3 after the property was seized. Failure to file within the
4 time limit terminates the state's right to claim a
5 condemnation of the property.

6 c. The state shall send a copy of the notice of
7 condemnation to be delivered to the person from whom the
8 property was seized, by certified mail or personal service.

9 3. a. The person from whom the property was seized may
10 make application for its return in the office of the clerk of
11 the district court for the county in which the property was
12 seized. The application shall be filed within thirty days
13 after the receipt of the notice of condemnation. Failure to
14 file the application within this time period terminates the
15 interest of the person and the ownership of the property shall
16 be transferred to the state.

17 b. The application for return of condemnable property
18 shall be written and shall state the specific item or items
19 sought, the nature and the source of the claimant's interest
20 in the property, and the grounds upon which the claimant seeks
21 to avoid condemnation. The ownership of property is not
22 sufficient grounds for its return. The written application
23 shall be specific and the claimant shall be limited at the
24 judicial hearing to proof of the grounds set forth in the
25 application for return. The fact that the property is
26 inadmissible as evidence or that it may be suppressed is not
27 grounds for its return. If specific grounds for return are
28 not provided in the application for return, or the grounds are
29 insufficient as a matter of law, the court may enter judgment
30 on the pleadings without further hearing.

31 4. If an application for return of condemnable property is
32 timely and of sufficient grounds, the claim shall be set for
33 hearing. The hearing shall be held not less than ten nor more
34 than thirty days after the filing of the claim. The
35 proceeding shall be conducted by a magistrate or a district

1 associate judge. All claims to the same property shall be
2 heard in one proceeding, unless it is shown that the
3 proceeding would result in prejudice to one or more of the
4 parties.

5 5. a. Upon a finding by the court that the property is
6 condemnable, the court shall enter an order transferring title
7 of the property to the state, and placed at the disposal of
8 the director, who may use or sell the property, depositing the
9 proceeds of the sale in the state fish and game protection
10 fund.

11 b. Upon a finding by the court that the property should
12 not be condemned, the property shall be returned to the person
13 from whom it was seized. If the property is necessary for use
14 as evidence in a criminal proceeding, the property shall not
15 be returned until its use as evidence is no longer required.

16 Sec. 3. Section 483A.34, Code 1997, is amended by striking
17 the section and inserting in lieu thereof the following:

18 483A.34 RIGHT TO APPEAL.

19 An appeal from a denial of an application for return of
20 condemnable property, or from an order for return of
21 condemnable property, shall be made within ten days after the
22 entry of a judgment order. The appellant, other than the
23 state, shall post a bond of a reasonable amount as the court
24 may fix and approve, conditioned to pay all costs of the
25 proceedings if the appellant is unsuccessful on appeal.

26 EXPLANATION

27 This bill provides that a device or material used to
28 violate Code chapter 481A, 481B, 482, 483A, 484A, or 484B, or
29 rules of the natural resource commission adopted pursuant to
30 those chapters, is a public nuisance and subject to seizure by
31 the department or any peace officer. The bill also
32 establishes procedures for disposing of the seized property or
33 returning it to persons who claim the seized property.

34 Procedures are also provided to appeal the court's judgment on
35 the disposal of the seized property.

1 Section 1. Section 483A.32, Code 1997, is amended to read
2 as follows:

3 483A.32 PUBLIC NUISANCE.

4 Any device, contrivance, or material used to violate a rule
5 adopted by the commission, or any other provision of this
6 chapter or chapters 481A, 481B, 482, 484A, or 484B, is a
7 public nuisance, ~~and the~~ and may be condemned by the state.
8 The director, and the director's officers, or any peace
9 officer, shall seize such the devices, contrivances, or
10 materials ~~so~~ used as a public nuisance, without warrant or
11 process, and deliver them to a magistrate having jurisdiction.
12 An automobile shall not be construed to be a public nuisance
13 under this section.

14 Sec. 2. Section 483A.33, Code 1997, is amended by striking
15 the section and inserting in lieu thereof the following:

16 483A.33 DISPOSITION OF PROPERTY SEIZED AS PUBLIC NUISANCE.

17 The disposition of property seized pursuant to section
18 483A.32 shall be conducted as follows:

19 1. The officer taking possession of property seized as a
20 public nuisance shall make a written inventory of the property
21 and deliver a copy of the inventory to the person from whom
22 the property was seized. The inventory shall include the name
23 of the person taking custody of the seized property, the date
24 and time of seizure, location of the seizure, and the name of
25 the seizing public agency. Property which has been seized
26 shall be safely secured and stored by the public agency which
27 caused its seizure unless directed otherwise by the county
28 attorney of the county where the property was seized or by the
29 attorney general.

30 2. a. The county attorney or attorney general shall file
31 with the clerk of the district court for the county in which
32 the property was seized a notice of condemnation which shall
33 include a description of the property claimed to be condemned
34 by the state, the grounds upon which the state claims that the
35 property has been condemned, the date and place of seizure,

1 and the name of the person from whom the property was seized.

2 b. The claim shall be filed not later than six months
3 after the property was seized. Failure to file within the
4 time limit terminates the state's right to claim a
5 condemnation of the property.

6 c. The state shall send a copy of the notice of
7 condemnation to be delivered to the person from whom the
8 property was seized, by certified mail or personal service.

9 3. a. The person from whom the property was seized may
10 make application for its return in the office of the clerk of
11 the district court for the county in which the property was
12 seized. The application shall be filed within thirty days
13 after the receipt of the notice of condemnation. Failure to
14 file the application within this time period terminates the
15 interest of the person and the ownership of the property shall
16 be transferred to the state.

17 b. The application for return of condemnable property
18 shall be written and shall state the specific item or items
19 sought, the nature and the source of the claimant's interest
20 in the property, and the grounds upon which the claimant seeks
21 to avoid condemnation. The ownership of property is not
22 sufficient grounds for its return. The written application
23 shall be specific and the claimant shall be limited at the
24 judicial hearing to proof of the grounds set forth in the
25 application for return. The fact that the property is
26 inadmissible as evidence or that it may be suppressed is not
27 grounds for its return. If specific grounds for return are
28 not provided in the application for return, or the grounds are
29 insufficient as a matter of law, the court may enter judgment
30 on the pleadings without further hearing.

31 4. If an application for return of condemnable property is
32 timely and of sufficient grounds, the claim shall be set for
33 hearing. The hearing shall be held not less than ten nor more
34 than thirty days after the filing of the claim. The
35 proceeding shall be conducted by a magistrate or a district

1 associate judge. All claims to the same property shall be
2 heard in one proceeding, unless it is shown that the
3 proceeding would result in prejudice to one or more of the
4 parties.

5 5. a. Upon a finding by the court that the property is
6 condemnable, the court shall enter an order transferring title
7 of the property to the state, and placed at the disposal of
8 the director, who may use or sell the property, depositing the
9 proceeds of the sale in the state fish and game protection
10 fund.

11 b. Upon a finding by the court that the property should
12 not be condemned, the property shall be returned to the person
13 from whom it was seized. If the property is necessary for use
14 as evidence in a criminal proceeding, the property shall not
15 be returned until its use as evidence is no longer required.

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20 condemnable property, or from an order for return of
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22 entry of a judgment order. The appellant, other than the
23 state, shall post a bond of a reasonable amount as the court
24 may fix and approve, conditioned to pay all costs of the
25 proceedings if the appellant is unsuccessful on appeal.

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HOUSE AMENDMENT TO
SENATE FILE 347

S-5487

- 1 Amend Senate File 347 as amended, passed, and
2 reprinted by the Senate, as follows:
3 1. Page 1, line 30, by striking the word "shall"
4 and inserting the following: "may".
5 2. Page 2, line 2, by striking the word "claim"
6 and inserting the following: "notice".
7 3. Page 2, by striking lines 6 through 8 and
8 inserting the following:
9 "c. The state shall give notice of condemnation to
10 the person from whom the property was seized and any
11 person identified as an owner or lien holder, by
12 certified mail, personal service, or publication."
13 4. Page 3, line 22, by inserting after the word
14 "order" the following: "and shall be conducted in the
15 same manner as an appeal in a small claims action".

RECEIVED FROM THE HOUSE

S-5487 FILED APRIL 2, 1998

Senate Concurred
4-13-98
(p. 1186)

SENATE FILE 347

AN ACT
RELATING TO THE DISPOSAL OF PUBLIC NUISANCES SEIZED BY THE
DEPARTMENT OF NATURAL RESOURCES.

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

Section 1. Section 483A.32, Code 1997, is amended to read as follows:

483A.32 PUBLIC NUISANCE.

Any device, contrivance, or material used to violate a rule adopted by the commission, or any other provision of this chapter or chapters 481A, 481B, 482, 484A, or 484B, is a public nuisance ~~and the~~ and may be condemned by the state. The director, and the director's officers, or any peace officer, shall seize such the devices, contrivances, or materials so used as a public nuisance, without warrant or process, and deliver them to a magistrate having jurisdiction. An automobile shall not be construed to be a public nuisance under this section.

Sec. 2. Section 483A.33, Code 1997, is amended by striking the section and inserting in lieu thereof the following:

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and time of seizure, location of the seizure, and the name of the seizing public agency. Property which has been seized shall be safely secured and stored by the public agency which caused its seizure unless directed otherwise by the county attorney of the county where the property was seized or by the attorney general.

2. a. The county attorney or attorney general may file with the clerk of the district court for the county in which the property was seized a notice of condemnation which shall include a description of the property claimed to be condemned by the state, the grounds upon which the state claims that the property has been condemned, the date and place of seizure, and the name of the person from whom the property was seized.

b. The notice shall be filed not later than six months after the property was seized. Failure to file within the time limit terminates the state's right to claim a condemnation of the property.

c. The state shall give notice of condemnation to the person from whom the property was seized and any person identified as an owner or lien holder, by certified mail, personal service, or publication.

3. a. The person from whom the property was seized may make application for its return in the office of the clerk of the district court for the county in which the property was seized. The application shall be filed within thirty days after the receipt of the notice of condemnation. Failure to file the application within this time period terminates the interest of the person and the ownership of the property shall be transferred to the state.

b. The application for return of condemnable property shall be written and shall state the specific item or items sought, the nature and the source of the claimant's interest in the property, and the grounds upon which the claimant seeks to avoid condemnation. The ownership of property is not sufficient grounds for its return. The written application

shall be specific and the claimant shall be limited at the judicial hearing to proof of the grounds set forth in the application for return. The fact that the property is inadmissible as evidence or that it may be suppressed is not grounds for its return. If specific grounds for return are not provided in the application for return, or the grounds are insufficient as a matter of law, the court may enter judgment on the pleadings without further hearing.

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5. a. Upon a finding by the court that the property is condemnable, the court shall enter an order transferring title of the property to the state, and placed at the disposal of the director, who may use or sell the property, depositing the proceeds of the sale in the state fish and game protection fund.

b. Upon a finding by the court that the property should not be condemned, the property shall be returned to the person from whom it was seized. If the property is necessary for use as evidence in a criminal proceeding, the property shall not be returned until its use as evidence is no longer required.

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manner as an appeal in a small claims action. The appellant, other than the state, shall post a bond of a reasonable amount as the court may fix and approve, conditioned to pay all costs of the proceedings if the appellant is unsuccessful on appeal.

MARY E. KRAMER
President of the Senate

RON J. CORBETT
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 347, Seventy-seventh General Assembly.

MARY PAT GUNDERSON
Secretary of the Senate

Approved April 20, 1998

TERRY E. BRANSTAD
Governor