

HSB 747

LOCAL GOVERNMENT

Summaard Riv

§ 02528

Fallon, Chair  
ARNOLD  
Houser

HOUSE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE ON  
LOCAL GOVERNMENT BILL  
BY CHAIRPERSON HOUSER)

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

A BILL FOR

1 An Act relating to the condemnation of private property for  
2 certain public purposes.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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the

1 e. ~~The current status in the planning process for the~~  
2 ~~public improvement, including meetings held and decisions made~~  
3 The name, address, and telephone number of the person  
4 designated by the acquiring agency as the person to contact  
5 regarding the public improvement.

6 f. A statement of rights of individual property owners  
7 with respect to the acquisition of their property and the  
8 availability of relocation benefits. The attorney general  
9 shall adopt by rule pursuant to chapter 17A a statement of  
10 rights which may be used in substantial form by any person  
11 required to provide the statement of rights as provided in  
12 this section.

13 Sec. 3. Section 6B.2A, subsections 2 and 3, Code  
14 Supplement 1999, are amended by striking the subsections and  
15 inserting in lieu thereof the following:

16 2. The acquiring agency shall cause a notice to be  
17 published once in a newspaper of general circulation in the  
18 county or city where the agricultural land is located. The  
19 notice should be published at least four but no more than  
20 twenty days before adoption of the ordinance, resolution,  
21 motion, or other declaration of intent to fund the site-  
22 specific design for the public improvement, make the final  
23 selection of the route or site location for the public  
24 improvement, or to acquire or condemn, if necessary, part or  
25 all of the property or an interest in the property for the  
26 public improvement. The published notice shall, at a minimum,  
27 include the following information:

28 a. The general nature of the public improvement.

29 b. A statement of the possibility that the acquiring  
30 agency may acquire part or all of the property or an interest  
31 in the property by condemnation for the public improvement.

32 c. The process to be followed by the acquiring agency in  
33 making the decision to fund the site-specific design for the  
34 public improvement, to make the final selection of the route  
35 or site location, or to acquire or condemn, if necessary, all

1 or a portion of the property or an interest in the property  
2 for public improvement.

3 d. The time and place of a public hearing at which an  
4 opportunity is provided for public input into the decision to  
5 fund the site specific design for the public improvement, to  
6 make the final selection of the route or site location, or to  
7 acquire or condemn, if necessary, all or a portion of the  
8 property or an interest in the property for the public  
9 improvement.

10 e. The name, address, and telephone number of the contact  
11 person regarding the public improvement.

12 3. If the acquiring agency is a person required to obtain  
13 a franchise under chapter 478, compliance with section 478.2  
14 shall satisfy the notice requirements of this section.

15 4. This section shall not apply to a condemnation of  
16 property by the state department of transportation for right-  
17 of-way that is contiguous to an existing road right-of-way and  
18 necessary for the maintenance, safety improvement, or repair  
19 of the existing road.

20 Sec. 4. Section 6B.2A, Code Supplement 1999, is amended by  
21 adding the following new subsection:

22 NEW SUBSECTION. 4. The time deadlines in this section do  
23 not apply during the existence of an emergency requiring the  
24 construction or repair of public improvements in situations  
25 where failure to immediately construct or repair would result  
26 in immediate danger to public health, safety, or welfare. The  
27 notices required in this section shall be provided to the  
28 owner as soon as practicable.

29 Sec. 5. Section 6B.2B, subsection 1, Code Supplement 1999,  
30 is amended to read as follows:

31 1. The acquiring agency shall make a good faith effort to  
32 negotiate with the owner to purchase the private property or  
33 property interest before filing an application for  
34 condemnation or otherwise proceeding with the condemnation  
35 process. An acquiring agency shall not make an offer to

1 purchase the property or property interest that is less than  
2 the fair market value the acquiring agency has established for  
3 the property or property interest pursuant to the appraisal  
4 required in section 6B.45. However, an acquiring agency need  
5 not make an offer in excess of that amount in order to satisfy  
6 the requirement to negotiate in good faith. An acquiring  
7 agency is deemed to have met the requirements of this section  
8 if the acquiring agency complies with section 6B.54.

9 Sec. 6. Section 6B.2B, subsection 2, Code Supplement 1999,  
10 is amended by striking the subsection.

11 Sec. 7. NEW SECTION. 6B.2C APPROVAL OF THE PUBLIC  
12 IMPROVEMENT.

13 The authority to condemn is not conferred, and the  
14 condemnation proceedings shall not commence, unless the  
15 governing body for the acquiring agency approves the use of  
16 condemnation and there is a reasonable expectation the  
17 applicant will be able to achieve its public purpose, comply  
18 with all applicable standards, and obtain the necessary  
19 permits.

20 Sec. 8. Section 6B.3, subsection 1, paragraph g, Code  
21 Supplement 1999, is amended to read as follows:

22 g. A showing of the minimum amount of land necessary to  
23 achieve the public purpose and the amount of land to be  
24 acquired by condemnation for the public improvement. Any land  
25 to be acquired by condemnation beyond the necessary minimum to  
26 complete the project shall be presumed not to be necessary for  
27 a public use or public purpose unless the applicant can show  
28 that a substantial need exists for the additional property to  
29 achieve the public use or public purpose, or that the land in  
30 question ~~is-of~~ constitutes an uneconomical remnant that has  
31 little or no value or utility to the owner, or that the owner  
32 consents to the condemnation.

33 Sec. 9. Section 6B.4, unnumbered paragraph 2, Code  
34 Supplement 1999, is amended to read as follows:

35 The chief judge of the judicial district or the chief

1 judge's designee shall select by lot six persons from the  
2 list, two persons who are owner-operators of agricultural  
3 property when the property to be condemned is agricultural  
4 property; two persons who are owners of city property when the  
5 property to be condemned is other than agricultural property;  
6 and two persons from each of the remaining two representative  
7 groups, who shall constitute a compensation commission to  
8 assess the damages to all property to be taken by the  
9 applicant and located in the county, and shall name a  
10 chairperson from the persons selected. The chief judge or the  
11 judge's designee may appoint such alternative members and  
12 chairpersons to the commission as are deemed necessary and  
13 appropriate under the circumstances. A person shall not be  
14 selected as a member or alternative member of the compensation  
15 commission if the person possesses any interest in the  
16 proceeding which would cause the person to render a biased  
17 decision. ~~The clerk of the district court shall send, by~~  
18 ~~ordinary mail, a list of those persons selected to the~~  
19 ~~applicant and to the owner of the property at the owner's last~~  
20 ~~known address. The list shall be provided prior to the~~  
21 ~~mailing, by any party, of a notice of assessment under section~~  
22 ~~6B.8. If the clerk of the district court is unable to locate~~  
23 ~~an address for the owner of the property, the list shall be~~  
24 ~~published once in a newspaper of general circulation in the~~  
25 ~~county. The applicant shall reimburse the clerk of the~~  
26 ~~district court for the cost of mailing and publication. The~~  
27 applicant shall mail a copy of the list of commissioners and  
28 alternates appointed by the chief judge by certified mail to  
29 the property owner at the owner's last known address. The  
30 applicant shall also cause the list of commissioners and  
31 alternates to be published once in a newspaper of general  
32 circulation in the county, not less than four nor more than  
33 twenty days before the meeting of the compensation commission  
34 to assess the damages. Service of the list of commissioners  
35 and alternates by publication shall be deemed complete on the

1 day of publication. In lieu of mailing and publishing the  
2 list of commissioners and alternates, the applicant may cause  
3 the list to be served upon the owner of the property in the  
4 manner provided by personal service of original notice. The  
5 list of commissioners and alternates shall be mailed and  
6 published or served, as above provided, prior to or  
7 contemporaneously with service of the notice of assessment as  
8 provided in section 6B.8.

9     Sec. 10. Section 6B.4, unnumbered paragraph 3, Code  
10 Supplement 1999, is amended by striking the unnumbered  
11 paragraph.

12     Sec. 11. Section 6B.5, Code 1999, is amended by striking  
13 the section and inserting in lieu thereof the following:

14     6B.5 CHALLENGES TO COMMISSIONERS AND FILLING VACANCIES ON  
15 THE COMMISSION.

16     1. Persons appointed by the chief judge to serve on the  
17 compensation commission are excused from the commission if  
18 they are removed for cause, stricken by a challenge pursuant  
19 to this section, unavailable to serve on the commission, or  
20 fail to act in their capacity as commissioners.

21     2. The applicant may challenge one commissioner without  
22 stating cause and the person or persons representing the fee  
23 ownership interest in the property may challenge one  
24 commissioner without stating cause. A challenge to the  
25 appointment of a commissioner shall be filed, in writing, with  
26 the sheriff not less than 7 seven days prior to the meeting of  
27 the compensation commission, and shall be mailed to the other  
28 party by ordinary mail on the day of filing. An alternate  
29 commissioner may not be challenged without cause. A challenge  
30 filed less than seven days prior to the meeting of the  
31 commission shall have no effect.

32     3. If a person is excused from the commission, the sheriff  
33 shall select and notify, not less than twenty-four hours prior  
34 to the meeting, the alternate commissioners appointed for that  
35 condemnation proceeding, to complete the membership of the

1 commission. Alternate commissioners selected and notified  
2 shall have the same qualifications as the person who is being  
3 replaced. If no alternates have been appointed, the chief  
4 judge of the judicial district shall appoint another person  
5 from the list, possessing the same qualifications as the  
6 person who is being replaced to complete the membership of the  
7 commission.

8 4. The sheriff shall notify alternate commissioners in the  
9 order directed by the chief judge, and the alternate  
10 commissioner first notified who is available to serve as a  
11 compensation commissioner shall serve in the place of the  
12 commissioner who was unable to serve or who was stricken from  
13 the panel.

14 5. If a person is excused from the commission, the  
15 applicant and the property owner may stipulate in writing to  
16 the selection and notification of a particular alternate  
17 having the same qualifications as the person who is being  
18 replaced, to complete the membership of the commission. Such  
19 stipulation shall be filed with the sheriff not less than  
20 seventy-two hours prior to the meeting of the commission.

21 Sec. 12. NEW SECTION. 6B.6 SHERIFF TO COORDINATE MEETING  
22 OF COMMISSIONERS AND PROVIDE MEETING PLACE.

23 The sheriff of the county in which the property to be  
24 condemned is located shall coordinate the meeting of  
25 commissioners, shall arrange an appropriate meeting place for  
26 commissioners, shall assure that appointed commissioners  
27 receive the order of the court appointing them and directing  
28 their attendance at the meeting of commissioners, and shall  
29 report the unavailability or absence of appointed  
30 commissioners to the chief judge, to the applicant, and to the  
31 landowner.

32 Sec. 13. Section 6B.7, Code Supplement 1999, is amended to  
33 read as follows:

34 6B.7 COMMISSIONERS TO QUALIFY.

35 Before ~~proceeding-with-the-assessment~~ meeting to assess the

1 damages for the taking, all commissioners shall qualify by  
2 filing with the sheriff a written oath that they will to the  
3 best of their ability faithfully and impartially assess  
4 damages and make a written report ~~containing the information~~  
5 ~~used by the commission in~~ assessing the damages to the  
6 sheriff. ~~The applicant or the owner may challenge one~~  
7 ~~commissioner without stating cause.--A challenge to the~~  
8 ~~appointment of a commissioner must be made to the chief judge~~  
9 ~~of the judicial district no less than seventy-two hours before~~  
10 ~~the condemnation jury is set to meet.--A commissioner shall be~~  
11 ~~appointed to fill a vacancy resulting from a challenge no less~~  
12 ~~than twenty-four hours before the jury is set to meet.~~

13 Sec. 14. Section 6B.8, Code Supplement 1999, is amended to  
14 read as follows:

15 6B.8 NOTICE OF ASSESSMENT.

16 The applicant, or the owner or any lienholder or  
17 encumbrancer of any land described in the application, may, at  
18 any time after the appointment of the commissioners, have the  
19 damages to the lands of any such owner assessed by giving the  
20 other party, if a resident of this state, thirty days' notice,  
21 in writing. The notice shall specify the day and the hour  
22 when the commissioners compensation commission will meet, view  
23 the premises, and assess the damages. The notice shall be  
24 personally served upon all necessary parties in the same  
25 manner as original notices. If a city or county, or an agency  
26 of a city or county, is seeking to condemn agricultural land  
27 for an industry as that term is defined in section 260E.2, the  
28 notice shall inform the landowner that the landowner may  
29 request that the compensation commission review the  
30 application as provided in section 6B.4A.

31 ~~Service of the notice to a person not a resident of this~~  
32 ~~state shall be by certified mail to the person's last known~~  
33 ~~address.--At the same time, the applicant shall cause a notice~~  
34 ~~to be published once in a newspaper of general circulation in~~  
35 ~~the county prior to the day fixed for the appraisal, which~~

~~1 day shall be at least thirty days after publication -- Service  
2 of notice in this manner shall be deemed complete on the day  
3 of publication.~~

4 Sec. 15. Section 6B.11, Code Supplement 1999, is amended  
5 to read as follows:

6 6B.11 FILING OF NOTICES AND RETURN OF SERVICE.

7 Notices, immediately after the service thereof, shall, with  
8 proper return of service endorsed thereon or attached thereto,  
9 be filed with the sheriff. The sheriff shall at once cause  
10 the commissioners to be notified of the day and hour when they  
11 will be required to proceed with the appraisalment. ~~The notice  
12 to the commissioners shall also be published by the sheriff  
13 pursuant to section 331.305.~~

14 Sec. 16. Section 6B.14, Code Supplement 1999, is amended  
15 by adding the following new unnumbered paragraph after  
16 unnumbered paragraph 1:

17 NEW UNNUMBERED PARAGRAPH. Prior to the open meeting of the  
18 commission, the commission or a commissioner shall not  
19 communicate with the applicant, property owner, or tenant, or  
20 their agents, regarding the condemnation proceedings. The  
21 commissioners shall meet in open session to view the property  
22 and to receive evidence, but may deliberate in closed session.  
23 After closed session deliberations commence, the commission  
24 and each commissioner is prohibited from communicating with  
25 any party to the proceeding, unless such communication occurs  
26 in the presence of or with the consent of the property owner  
27 and the other parties who appeared before the commission.

28 Sec. 17. Section 6B.25, Code 1999, is amended to read as  
29 follows:

30 6B.25 RIGHT TO TAKE POSSESSION OF LANDS -- TITLE.

31 Upon the filing of the commissioners' report with the  
32 sheriff, the applicant may deposit with the sheriff the amount  
33 assessed in favor of a claimant, and the applicant, except as  
34 otherwise provided, may take possession of the land condemned  
35 and proceed with the improvement. An appeal from the

1 assessment does not affect the right, except as otherwise  
2 provided. Prior to expiration of the time provided for  
3 appeal, the property owner may apply to the district court for  
4 release of that part of the damages deposited which the court  
5 finds proper. If there is not an appeal by any party, the  
6 property owner shall be entitled to the whole of the damages  
7 awarded. Upon appeal from the commissioners' award of damages  
8 the district court may direct that the part of the amount of  
9 damages deposited with the sheriff, as it finds just and  
10 proper, be paid to the claimant. If upon trial of the appeal  
11 a lesser amount is awarded the difference between the amount  
12 so awarded and the amount paid shall be repaid by the person  
13 to whom it was paid and upon failure to make the repayment the  
14 party shall have judgment entered against the person who  
15 received the excess payment. Title to the property or the  
16 interests in property passes to the applicant when damages  
17 have been finally determined and paid.

18 Sec. 18. Section 6B.33, Code Supplement 1999, is amended  
19 to read as follows:

20 6B.33 COSTS AND ATTORNEY FEES.

21 The applicant shall pay all costs of the assessment made by  
22 the commissioners and reasonable attorney fees and costs  
23 incurred by the condemnee as determined by the commissioners  
24 if the award of the commissioners exceeds one hundred ten  
25 percent of the final offer of the applicant prior to  
26 condemnation. The applicant shall file with the sheriff an  
27 affidavit setting forth the most recent offer made to the  
28 person whose property is sought to be condemned. Members of  
29 such commissions shall receive a per diem of fifty two hundred  
30 dollars and actual and necessary expenses incurred in the  
31 performance of their official duties. The applicant shall  
32 reimburse the county sheriff for the per diem and expense  
33 amounts paid by the sheriff to the members. The applicant  
34 shall reimburse the owner for the expenses the owner incurred  
35 for recording fees, penalty costs for full or partial

1 prepayment of any preexisting recorded mortgage entered into  
 2 in good faith encumbering the property, and for similar  
 3 expenses incidental to conveying the property to the  
 4 applicant. The applicant shall also pay all costs occasioned  
 5 by the appeal, including reasonable attorney fees to be taxed  
 6 by the court, unless on the trial thereof the same or a lesser  
 7 amount of damages is awarded than was allowed by the tribunal  
 8 from which the appeal was taken.

9 Sec. 19. Section 6B.45, Code Supplement 1999, is amended  
 10 to read as follows:

11 6B.45 MAILING COPY OF APPRAISAL.

12 When any real property or interest in real property is to  
 13 be purchased, or in lieu thereof to be condemned, the  
 14 acquiring agency or its agent shall submit to the person,  
 15 corporation, or entity whose property or interest in the  
 16 property is to be taken, by ordinary mail, at least ten days  
 17 prior to the date of-contact upon which the acquiring agency  
 18 or its agent contacts the property owner to commence  
 19 negotiations, a copy of the appraisal in its entirety upon  
 20 such real property or interest in such real property prepared  
 21 for the acquiring agency or its agent, which shall include, at  
 22 a minimum, an itemization of the appraised value of the real  
 23 property or interest in the property, any buildings on the  
 24 property, all other improvements including fences, severance  
 25 damages, and loss of access. The appraisal sent to the  
 26 condemnee shall be that appraisal upon which the condemnor  
 27 will rely to establish an amount which the condemnor believes  
 28 to be just compensation for the real property. All other  
 29 appraisals made on the property as a result of the  
 30 condemnation proceeding shall be made available to the  
 31 condemnee upon request. In lieu of an appraisal, a utility or  
 32 person under the jurisdiction of the utilities board of the  
 33 department of commerce, or any other utility conferred the  
 34 right by statute to condemn private property, shall provide in  
 35 writing by certified mail to the owner of record thirty days

1 prior to negotiations, the methods and factors used in  
2 arriving at an offered price for voluntary easements including  
3 the range of cash amount of each component. An acquiring  
4 agency may obtain a signed written waiver from the landowner  
5 to allow negotiations to commence prior to the expiration of  
6 the applicable waiting period for the commencement of  
7 negotiations.

8 Sec. 20. Section 6B.57, Code Supplement 1999, is amended  
9 to read as follows:

10 6B.57 PROCEDURAL COMPLIANCE.

11 If ~~a city~~ an acquiring agency makes a good faith effort to  
12 serve, send, or provide the notices or documents required  
13 under this chapter to the owner of private property that is or  
14 may be the subject of condemnation, but fails to provide the  
15 notice or documents to the owner, such failure shall not  
16 constitute grounds for invalidation of the condemnation  
17 proceeding if the chief judge of the judicial district  
18 determines that such failure can be corrected by delaying the  
19 condemnation proceedings to allow compliance with the  
20 requirement and or such failure does not unreasonably  
21 prejudice the owner.

22 Sec. 21. Section 478.2, unnumbered paragraphs 2 and 5,  
23 Code 1999, are amended to read as follows:

24 As conditions precedent to the filing of a petition with  
25 the utilities board requesting a franchise for a new  
26 transmission line, and not less than thirty days prior to the  
27 filing of such petition, the person, company, or corporation  
28 shall hold informational meetings in each county in which real  
29 property or rights will be affected. A member of the board,  
30 the counsel of the board, or a hearing examiner designated by  
31 the board shall serve as the presiding officer at each meeting  
32 and, shall present an agenda for such meeting which shall  
33 include a summary of the legal rights of the affected  
34 landowners, and shall distribute and review the statement of  
35 individual rights required under section 6B.2A, subsection 1.

1 No A formal record of the meeting shall not be required.  
 2 The notice shall set forth the name of the applicant; state  
 3 the applicant's principal place of business; state the general  
 4 description and purpose of the proposed project; state the  
 5 general nature of the right-of-way right-of-way desired; state  
 6 the possibility that the right-of-way may be acquired by  
 7 condemnation if approved by the utilities board; provide a map  
 8 showing the route of the proposed project; provide a  
 9 description of the process used by the utilities board in  
 10 making a decision on whether to approve a franchise or grant  
 11 the right to take property by eminent domain; advise that the  
 12 landowner has the right to be present at such meetings and to  
 13 file objections with the utilities board; designate the place  
 14 and time of the meeting; be served not less than thirty days  
 15 prior to the time set for the meeting by certified mail with  
 16 return receipt requested; and be published once in a newspaper  
 17 of general circulation in the county at least one week and not  
 18 more than three weeks before the time of the meeting and such  
 19 publication shall be considered notice to landowners whose  
 20 residence is not known.

21 Sec. 22. Section 478.6, unnumbered paragraph 2, Code 1999,  
 22 is amended to read as follows:

23 Where a petition seeks the use of the right of eminent  
 24 domain over specific parcels of real property, the board shall  
 25 prescribe the notice to be served upon the owners of record  
 26 and parties in possession of said the property over which the  
 27 use of the right of eminent domain is sought. The notice  
 28 shall include the statement of individual rights required  
 29 pursuant to section 6B.2A, subsection 1.

30 Sec. 23. Section 6B.12, Code Supplement 1999, and section  
 31 6B.13, Code 1999, are repealed.

32 Sec. 24. EFFECTIVE DATE. This Act, being deemed of  
 33 immediate importance, takes effect upon enactment.

34 EXPLANATION

35 This bill makes several changes to the law relating to the

1 condemnation of private property by an acquiring agency.

2 Code section 6B.1 is amended to provide that the Code  
3 chapter prescribing the condemnation process does not apply to  
4 property dedicated to an acquiring agency or to property  
5 obtained by an acquiring agency through voluntary negotiation  
6 and purchase.

7 Code section 6B.2A is amended to strike the requirement  
8 that an acquiring agency give notice of a proposed public  
9 improvement that may involve condemnation of property and  
10 replaces it with the requirement of a public hearing if  
11 agricultural land located outside a city may be acquired for a  
12 public improvement. The section is also amended to provide  
13 that the time deadlines do not apply during an emergency  
14 requiring construction or repair of public improvements.

15 Code section 6B.2B is amended to provide that if an  
16 acquiring agency offers to purchase the land for fair market  
17 value as determined by the agency, the agency has satisfied  
18 the requirement that it negotiate in good faith with the  
19 owner. Also, if an agency follows the acquisition policies as  
20 set forth in Code chapter 6B, the agency is conclusively  
21 presumed to have satisfied the requirement to negotiate in  
22 good faith.

23 Code section 6B.2C is enacted to provide that condemnation  
24 proceedings shall not begin until the governing body of the  
25 acquiring agency approves the use of condemnation and the  
26 acquiring agency has complied with applicable standards and  
27 obtained the necessary permits.

28 Code section 6B.3, which contains the requirements for  
29 condemnation applications, amends the requirement that the  
30 acquiring agency make a showing of the minimum amount of land  
31 necessary for the improvement and the amount of land to be  
32 condemned and provides that excess property may be condemned  
33 as an uneconomical remnant.

34 Code section 6B.4 is amended to provide that the condemner  
35 shall mail the list of compensation commissioners and

1 alternates to the property owner. The condemner is also  
2 required to publish the list.

3 Code section 6B.5 is amended to provide that if someone  
4 selected to serve on a compensation commission is unable to  
5 serve, the sheriff shall notify alternate commissioners in the  
6 order directed by the chief judge until a replacement is  
7 appointed. Also, the section is amended to allow parties to a  
8 condemnation to challenge appointment of a commissioner.

9 New Code section 6B.6 is enacted to require the sheriff to  
10 arrange the meeting of the compensation commission.

11 Code section 6B.7 is amended to remove the language on  
12 appointment and striking of commissioners.

13 Code section 6B.8 is amended to strike the 30-day notice of  
14 assessment and provides that the condemnation application and  
15 order shall be personally served on the property owner.

16 Code section 6B.11 is amended to strike the requirement  
17 that the sheriff publish the notice to the commissioners to  
18 proceed with an appraisement.

19 Code section 6B.14 is amended to provide that the  
20 compensation commission may meet in open session to view the  
21 property and receive evidence, but may deliberate in closed  
22 session. During closed session deliberations, commissioners  
23 are prohibited from communicating with any party to the action  
24 unless the other party consents. The section is also amended  
25 to provide that a commissioner may not communicate with a  
26 party to the action prior to the open meeting.

27 Code section 6B.25 is amended to provide that a property  
28 owner may apply to the court for release of a portion of  
29 damages prior to expiration of the time for appeal.

30 Code section 6B.33 is amended to increase the per diem for  
31 compensation commission members from \$50 to \$200.

32 Code section 6B.45 is amended to require that an acquiring  
33 agency secure a copy of an appraisal of land to be condemned  
34 and provide a copy of the appraisal to the property owner at  
35 least 10 days before the acquiring agency contacts the

1 property owner to begin negotiations.

2 Code section 6B.57 is amended to add all acquiring agencies  
3 to the procedural compliance section. Currently, only cities  
4 are covered by this section which provides that a procedural  
5 error in providing notices for a condemnation action is not  
6 fatal to the action if the error can be corrected or if it  
7 does not unreasonably prejudice the property owner.

8 Code sections 6B.12 and 6B.13, relating to service of  
9 notice, are repealed and repeated elsewhere in Code chapter  
10 6B.

11 The bill makes corresponding amendments to Code sections  
12 478.2 and 478.6 to add the statement of individual rights to  
13 the information to be mailed with the notice to the landowner  
14 by the utility and to be provided at the informational meeting  
15 held on the project.

16 The bill also amends Code section 478.2 to require that the  
17 notice of informational meeting provide a description of the  
18 process followed by the utility when granting a franchise or  
19 condemning property and state the possibility that the right-  
20 of-way may be acquired by condemnation.

21 The bill also amends Code section 478.6 to require that the  
22 statement of individual rights be mailed to each landowner  
23 along with the notice of hearing on condemnation required by  
24 that section.

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REPRINTED

MAR 1 2000  
Place On Calendar

HOUSE FILE 2528  
BY COMMITTEE ON LOCAL  
GOVERNMENT

(SUCCESSOR TO HSB 747)

(p.582)  
Passed House, Date 3-7-00 Passed Senate, Date 4-5-00  
Vote: Ayes 89 Nays 5 Vote: Ayes 48 Nays 0  
Approved 5/10/00

(p.1355) Re-Passed 4-10-00  
Vote 93-0

A BILL FOR

1 An Act relating to the condemnation of private property for  
2 certain public purposes and providing an effective date.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 2528

1 Section 1. Section 6B.1, Code 1999, is amended to read as  
2 follows:

3 6B.1 PROCEDURE PROVIDED.

4 The procedure for the condemnation of private property for  
5 works of internal improvement, and for other public projects,  
6 uses and, or purposes, unless and except as otherwise provided  
7 by law, shall be in accordance with the provisions of this  
8 chapter. This chapter shall not apply to the dedication of  
9 property to an acquiring agency or to the voluntary  
10 negotiation and purchase of property by an acquiring agency.

11 Sec. 2. Section 6B.2A, subsection 1, Code Supplement 1999,  
12 is amended to read as follows:

13 1. An acquiring agency shall provide written **notification**  
14 notice of a public hearing to each owner of record of **private**  
15 property agricultural land that may be the subject of  
16 condemnation. The authority under this chapter is not  
17 conferred and condemnation proceedings shall not begin unless  
18 a good faith effort is made to serve mail and publish the  
19 notice as provided in this section on the owner of record of  
20 the property subject to condemnation. The notice shall be  
21 mailed by ordinary mail, not less than thirty days before the  
22 date the hearing is held, to the owner of **record's** record of  
23 each property or property interest at the owner's last known  
24 address no-less-than-thirty-days as shown in the records of  
25 the county auditor not less than seven days nor more than  
26 fourteen days prior to the date of mailing. A change in  
27 ownership of any such property which is not reflected in the  
28 records of the county auditor during the period those records  
29 are searched as above provided shall not affect the validity  
30 of the notice or any condemnation proceeding commenced on the  
31 basis of such notice. The notice shall be given and the  
32 public hearing held before adoption of the ordinance,  
33 resolution, motion, or other declaration of intent to **proceed**  
34 with fund the site-specific design for the public improvement,  
35 to make the final selection of the route or site location for

1 the public improvement ~~and-the-acquisition-or-condemnation,~~ or  
2 to acquire or condemn, if necessary, all or a portion of the  
3 property or an interest in the property for the public  
4 improvement. If the location of the public improvement is  
5 changed or expanded after the decision has been made to  
6 proceed with the public improvement, a notice shall be mailed  
7 by ordinary mail no less than thirty days before the adoption  
8 of the ordinance, resolution, motion, or other declaration of  
9 intent to proceed with a change in the location of the public  
10 improvement to the owner of record of the land to be acquired  
11 or condemned, if necessary, in the new location of the public  
12 improvement affected by the change. ~~The-notice-shall-include~~  
13 ~~the-statement-of-individual-rights-required-under-section~~  
14 ~~6B-2B-~~ The mailed notice shall, at a minimum, include the  
15 following information:

16 a. The general nature of the public improvement.

17 b. ~~The-acquiring-agency's-intended-use-of-the-private~~  
18 property A statement of the possibility that the acquiring  
19 agency may acquire part or all of the property or interest in  
20 the property by condemnation for the public improvement.

21 c. The process to be followed by the acquiring agency in  
22 making the decision to ~~proceed-with-the-public-improvement-and~~  
23 ~~the-acquisition-or-condemnation~~ fund the site-specific design  
24 for the public improvement, to make the final selection of the  
25 route or site location, or to acquire or condemn, if  
26 necessary, all or a portion of the property or an interest in  
27 the property for public improvement.

28 d. The time, and place, and manner of a public hearing at  
29 which an opportunity is provided for public input into the  
30 decision to ~~proceed-with-the-public-improvement-and-the~~  
31 ~~acquisition-or-condemnation~~ fund the site-specific design for  
32 the public improvement, to make the final selection of the  
33 route or site location, or to acquire or condemn, if  
34 necessary, all or a portion of the property or an interest in  
35 the property for the public improvement.

1 e. ~~The current status in the planning process for the~~  
2 ~~public improvement, including meetings held and decisions made~~  
3 The name, address, and telephone number of the person  
4 designated by the acquiring agency as the person to contact  
5 regarding the public improvement.

6 f. A statement of rights of individual property owners  
7 with respect to the acquisition of their property and the  
8 availability of relocation benefits. The attorney general  
9 shall adopt by rule pursuant to chapter 17A a statement of  
10 rights which may be used in substantial form by any person  
11 required to provide the statement of rights as provided in  
12 this section.

13 Sec. 3. Section 6B.2A, subsections 2 and 3, Code  
14 Supplement 1999, are amended by striking the subsections and  
15 inserting in lieu thereof the following:

16 2. The acquiring agency shall cause a notice to be  
17 published once in a newspaper of general circulation in the  
18 county or city where the agricultural land is located. The  
19 notice should be published at least four but no more than  
20 twenty days before adoption of the ordinance, resolution,  
21 motion, or other declaration of intent to fund the site-  
22 specific design for the public improvement, make the final  
23 selection of the route or site location for the public  
24 improvement, or to acquire or condemn, if necessary, part or  
25 all of the property or an interest in the property for the  
26 public improvement. The published notice shall, at a minimum,  
27 include the following information:

28 a. The general nature of the public improvement.

29 b. A statement of the possibility that the acquiring  
30 agency may acquire part or all of the property or an interest  
31 in the property by condemnation for the public improvement.

32 c. The process to be followed by the acquiring agency in  
33 making the decision to fund the site-specific design for the  
34 public improvement, to make the final selection of the route  
35 or site location, or to acquire or condemn, if necessary, all

1 or a portion of the property or an interest in the property  
2 for the public improvement.

3 d. The time and place of a public hearing at which an  
4 opportunity is provided for public input into the decision to  
5 fund the site specific design for the public improvement, to  
6 make the final selection of the route or site location, or to  
7 acquire or condemn, if necessary, all or a portion of the  
8 property or an interest in the property for the public  
9 improvement.

10 e. The name, address, and telephone number of the contact  
11 person regarding the public improvement.

12 3. If the acquiring agency is a person required to obtain  
13 a franchise under chapter 478, compliance with section 478.2  
14 shall satisfy the notice requirements of this section.

15 4. This section shall not apply to a condemnation of  
16 property by the state department of transportation for right-  
17 of-way that is contiguous to an existing road right-of-way and  
18 necessary for the maintenance, safety improvement, or repair  
19 of the existing road.

20 Sec. 4. Section 6B.2A, Code Supplement 1999, is amended by  
21 adding the following new subsection:

22 NEW SUBSECTION. 4. The time deadlines in this section do  
23 not apply during the existence of an emergency requiring the  
24 construction or repair of public improvements in situations  
25 where failure to immediately construct or repair would result  
26 in immediate danger to public health, safety, or welfare. The  
27 notices required in this section shall be provided to the  
28 owner as soon as practicable.

29 Sec. 5. Section 6B.2B, subsection 1, Code Supplement 1999,  
30 is amended to read as follows:

31 1. The acquiring agency shall make a good faith effort to  
32 negotiate with the owner to purchase the private property or  
33 property interest before filing an application for  
34 condemnation or otherwise proceeding with the condemnation  
35 process. An acquiring agency shall not make an offer to

1 purchase the property or property interest that is less than  
2 the fair market value the acquiring agency has established for  
3 the property or property interest pursuant to the appraisal  
4 required in section 6B.45. However, an acquiring agency need  
5 not make an offer in excess of that amount in order to satisfy  
6 the requirement to negotiate in good faith. An acquiring  
7 agency is deemed to have met the requirements of this section  
8 if the acquiring agency complies with section 6B.54.

9 Sec. 6. Section 6B.2B, subsection 2, Code Supplement 1999,  
10 is amended by striking the subsection.

11 Sec. 7. NEW SECTION. 6B.2C APPROVAL OF THE PUBLIC  
12 IMPROVEMENT.

13 The authority to condemn is not conferred, and the  
14 condemnation proceedings shall not commence, unless the  
15 governing body for the acquiring agency approves the use of  
16 condemnation and there is a reasonable expectation the  
17 applicant will be able to achieve its public purpose, comply  
18 with all applicable standards, and obtain the necessary  
19 permits.

20 Sec. 8. Section 6B.3, subsection 1, paragraph g, Code  
21 Supplement 1999, is amended to read as follows:

22 g. A showing of the minimum amount of land necessary to  
23 achieve the public purpose and the amount of land to be  
24 acquired by condemnation for the public improvement. Any land  
25 to be acquired by condemnation beyond the necessary minimum to  
26 complete the project shall be presumed not to be necessary for  
27 a public use or public purpose unless the applicant can show  
28 that a substantial need exists for the additional property to  
29 achieve the public use or public purpose, or that the land in  
30 question ~~is-of~~ constitutes an uneconomical remnant that has  
31 little or no value or utility to the owner, or that the owner  
32 consents to the condemnation.

33 Sec. 9. Section 6B.4, unnumbered paragraph 2, Code  
34 Supplement 1999, is amended to read as follows:

35 The chief judge of the judicial district or the chief

1 judge's designee shall select by lot six persons from the  
2 list, two persons who are owner-operators of agricultural  
3 property when the property to be condemned is agricultural  
4 property; two persons who are owners of city property when the  
5 property to be condemned is other than agricultural property;  
6 and two persons from each of the remaining two representative  
7 groups, who shall constitute a compensation commission to  
8 assess the damages to all property to be taken by the  
9 applicant and located in the county, and shall name a  
10 chairperson from the persons selected. The chief judge or the  
11 judge's designee may appoint such alternate members and  
12 chairpersons to the commission as are deemed necessary and  
13 appropriate under the circumstances. A person shall not be  
14 selected as a member or alternate member of the compensation  
15 commission if the person possesses any interest in the  
16 proceeding which would cause the person to render a biased  
17 decision. ~~The clerk of the district court shall send, by~~  
18 ~~ordinary mail, a list of those persons selected to the~~  
19 ~~applicant and to the owner of the property at the owner's last~~  
20 ~~known address. The list shall be provided prior to the~~  
21 ~~mailing, by any party, of a notice of assessment under section~~  
22 ~~6B:8. If the clerk of the district court is unable to locate~~  
23 ~~an address for the owner of the property, the list shall be~~  
24 ~~published once in a newspaper of general circulation in the~~  
25 ~~county. The applicant shall reimburse the clerk of the~~  
26 ~~district court for the cost of mailing and publication. The~~  
27 applicant shall mail a copy of the list of commissioners and  
28 alternates appointed by the chief judge by certified mail to  
29 the property owner at the owner's last known address. The  
30 applicant shall also cause the list of commissioners and  
31 alternates to be published once in a newspaper of general  
32 circulation in the county, not less than four nor more than  
33 twenty days before the meeting of the compensation commission  
34 to assess the damages. Service of the list of commissioners  
35 and alternates by publication shall be deemed complete on the

1 day of publication. In lieu of mailing and publishing the  
2 list of commissioners and alternates, the applicant may cause  
3 the list to be served upon the owner of the property in the  
4 manner provided by the Iowa rules of civil procedure for the  
5 personal service of original notice. The list of  
6 commissioners and alternates shall be mailed and published or  
7 served, as above provided, prior to or contemporaneously with  
8 service of the notice of assessment as provided in section  
9 6B.8.

10 Sec. 10. Section 6B.4, unnumbered paragraph 3, Code  
11 Supplement 1999, is amended by striking the unnumbered  
12 paragraph.

13 Sec. 11. Section 6B.5, Code 1999, is amended by striking  
14 the section and inserting in lieu thereof the following:

15 6B.5 CHALLENGES TO COMMISSIONERS AND FILLING VACANCIES ON  
16 THE COMMISSION.

17 1. Persons appointed by the chief judge to serve on the  
18 compensation commission are excused from the commission if  
19 they are removed for cause, stricken by a challenge pursuant  
20 to this section, unavailable to serve on the commission, or  
21 fail to act in their capacity as commissioners.

22 2. The applicant may challenge one commissioner without  
23 stating cause and the person or persons representing the fee  
24 ownership interest in the property may challenge one  
25 commissioner without stating cause. A challenge to the  
26 appointment of a commissioner shall be filed, in writing, with  
27 the sheriff not less than 7 seven days prior to the meeting of  
28 the compensation commission, and shall be mailed to the other  
29 party by ordinary mail on the day of filing. An alternate  
30 commissioner may not be challenged without cause. A challenge  
31 filed less than seven days prior to the meeting of the  
32 commission shall have no effect.

33 3. If a person is excused from the commission, the sheriff  
34 shall select and notify, not less than twenty-four hours prior  
35 to the meeting, the alternate commissioners appointed for that

1 condemnation proceeding, to complete the membership of the  
2 commission. Alternate commissioners selected and notified  
3 shall have the same qualifications as the person who is being  
4 replaced. If no alternates have been appointed, the chief  
5 judge of the judicial district shall appoint another person  
6 from the list, possessing the same qualifications as the  
7 person who is being replaced to complete the membership of the  
8 commission.

9 4. The sheriff shall notify alternate commissioners in the  
10 order directed by the chief judge, and the alternate  
11 commissioner first notified who is available to serve as a  
12 compensation commissioner shall serve in the place of the  
13 commissioner who was unable to serve or who was stricken from  
14 the panel.

15 5. If a person is excused from the commission, the  
16 applicant and the property owner may stipulate in writing to  
17 the selection and notification of a particular alternate  
18 having the same qualifications as the person who is being  
19 replaced, to complete the membership of the commission. Such  
20 stipulation shall be filed with the sheriff not less than  
21 seventy-two hours prior to the meeting of the commission.

22 Sec. 12. NEW SECTION. 6B.6 SHERIFF TO COORDINATE MEETING  
23 OF COMMISSIONERS AND PROVIDE MEETING PLACE.

24 The sheriff of the county in which the property to be  
25 condemned is located shall coordinate the meeting of  
26 commissioners, shall arrange an appropriate meeting place for  
27 commissioners, shall assure that appointed commissioners  
28 receive the order of the court appointing them and directing  
29 their attendance at the meeting of commissioners, and shall  
30 report the unavailability or absence of appointed  
31 commissioners to the chief judge, to the applicant, and to the  
32 landowner.

33 Sec. 13. Section 6B.7, Code Supplement 1999, is amended to  
34 read as follows:

35 6B.7 COMMISSIONERS TO QUALIFY.

1 Before ~~proceeding with the assessment~~ meeting to assess the  
2 damages for the taking, all commissioners shall qualify by  
3 filing with the sheriff a written oath that they will to the  
4 best of their ability faithfully and impartially assess  
5 damages and make a written report ~~containing the information~~  
6 ~~used by the commission in~~ assessing the damages to the  
7 sheriff. ~~The applicant or the owner may challenge one~~  
8 ~~commissioner without stating cause. A challenge to the~~  
9 ~~appointment of a commissioner must be made to the chief judge~~  
10 ~~of the judicial district no less than seventy-two hours before~~  
11 ~~the condemnation jury is set to meet. A commissioner shall be~~  
12 ~~appointed to fill a vacancy resulting from a challenge no less~~  
13 ~~than twenty-four hours before the jury is set to meet.~~

14 Sec. 14. Section 6B.8, Code Supplement 1999, is amended to  
15 read as follows:

16 6B.8 NOTICE OF ASSESSMENT.

17 The applicant, or the owner or any lienholder or  
18 encumbrancer of any land described in the application, may, at  
19 any time after the appointment of the commissioners, have the  
20 damages to the lands of any such owner assessed by giving the  
21 other party, if a resident of this state, thirty days' notice,  
22 in writing. The notice shall specify the day and the hour  
23 when the commissioners compensation commission will meet, view  
24 the premises, and assess the damages. The notice shall be  
25 personally served upon all necessary parties in the same  
26 manner ~~as original notices~~ provided by the Iowa rules of civil  
27 procedure for the personal service of original notice. If a  
28 city or county, or an agency of a city or county, is seeking  
29 to condemn agricultural land for an industry as that term is  
30 defined in section 260E.2, the notice shall inform the  
31 landowner that the landowner may request that the compensation  
32 commission review the application as provided in section  
33 6B.4A.

34 ~~Service of the notice to a person not a resident of this~~  
35 ~~state shall be by certified mail to the person's last known~~

1 address:--At-the-same-time,-the-applicant-shall-cause-a-notice  
2 to-be-published-once-in-a-newspaper-of-general-circulation-in  
3 the-county-prior-to-the-day-fixed-for-the-appraisement,-which  
4 day-shall-be-at-least-thirty-days-after-publication:--Service  
5 of-notice-in-this-manner-shall-be-deemed-complete-on-the-day  
6 of-publication-

7 Sec. 15. Section 6B.11, Code Supplement 1999, is amended  
8 to read as follows:

9 6B.11 FILING OF NOTICES AND RETURN OF SERVICE.

10 Notices, immediately after the service thereof, shall, with  
11 proper return of service endorsed thereon or attached thereto,  
12 be filed with the sheriff. The sheriff shall at once cause  
13 the commissioners to be notified of the day and hour when they  
14 will be required to proceed with the appraisal. ~~The notice~~  
15 ~~to-the-commissioners-shall-also-be-published-by-the-sheriff~~  
16 ~~pursuant-to-section-331-305-~~

17 Sec. 16. Section 6B.14, Code Supplement 1999, is amended  
18 by adding the following new unnumbered paragraph after  
19 unnumbered paragraph 1:

20 NEW UNNUMBERED PARAGRAPH. Prior to the open meeting of the  
21 commission, the commission or a commissioner shall not  
22 communicate with the applicant, property owner, or tenant, or  
23 their agents, regarding the condemnation proceedings. The  
24 commissioners shall meet in open session to view the property  
25 and to receive evidence, but may deliberate in closed session.  
26 After closed session deliberations commence, the commission  
27 and each commissioner is prohibited from communicating with  
28 any party to the proceeding, unless such communication occurs  
29 in the presence of or with the consent of the property owner  
30 and the other parties who appeared before the commission.

31 Sec. 17. Section 6B.25, Code 1999, is amended to read as  
32 follows:

33 6B.25 RIGHT TO TAKE POSSESSION OF LANDS -- TITLE.

34 Upon the filing of the commissioners' report with the  
35 sheriff, the applicant may deposit with the sheriff the amount

1 assessed in favor of a claimant, and the applicant, except as  
2 otherwise provided, may take possession of the land condemned  
3 and proceed with the improvement. An appeal from the  
4 assessment does not affect the right,, except as otherwise  
5 provided. Prior to expiration of the time provided for  
6 appeal, the property owner may apply to the district court for  
7 release of that part of the damages deposited which the court  
8 finds proper. If there is not an appeal by any party, the  
9 property owner shall be entitled to the whole of the damages  
10 awarded. Upon appeal from the commissioners' award of damages  
11 the district court may direct that the part of the amount of  
12 damages deposited with the sheriff, as it finds just and  
13 proper, be paid to the claimant. If upon trial of the appeal  
14 a lesser amount is awarded the difference between the amount  
15 so awarded and the amount paid shall be repaid by the person  
16 to whom it was paid and upon failure to make the repayment the  
17 party shall have judgment entered against the person who  
18 received the excess payment. Title to the property or the  
19 interests in property passes to the applicant when damages  
20 have been finally determined and paid.

21 Sec. 18. Section 6B.33, Code Supplement 1999, is amended  
22 to read as follows:

23 6B.33 COSTS AND ATTORNEY FEES.

24 The applicant shall pay all costs of the assessment made by  
25 the commissioners and reasonable attorney fees and costs  
26 incurred by the condemnee as determined by the commissioners  
27 if the award of the commissioners exceeds one hundred ten  
28 percent of the final offer of the applicant prior to  
29 condemnation. The applicant shall file with the sheriff an  
30 affidavit setting forth the most recent offer made to the  
31 person whose property is sought to be condemned. Members of  
32 such commissions shall receive a per diem of fifty two hundred  
33 dollars and actual and necessary expenses incurred in the  
34 performance of their official duties. The applicant shall  
35 reimburse the county sheriff for the per diem and expense

1 amounts paid by the sheriff to the members. The applicant  
2 shall reimburse the owner for the expenses the owner incurred  
3 for recording fees, penalty costs for full or partial  
4 prepayment of any preexisting recorded mortgage entered into  
5 in good faith encumbering the property, and for similar  
6 expenses incidental to conveying the property to the  
7 applicant. The applicant shall also pay all costs occasioned  
8 by the appeal, including reasonable attorney fees to be taxed  
9 by the court, unless on the trial thereof the same or a lesser  
10 amount of damages is awarded than was allowed by the tribunal  
11 from which the appeal was taken.

12 Sec. 19. Section 6B.45, Code Supplement 1999, is amended  
13 to read as follows:

14 6B.45 MAILING COPY OF APPRAISAL.

15 When any real property or interest in real property is to  
16 be purchased, or in lieu thereof to be condemned, the  
17 acquiring agency or its agent shall submit to the person,  
18 corporation, or entity whose property or interest in the  
19 property is to be taken, by ordinary mail, at least ten days  
20 prior to the date of-contact upon which the acquiring agency  
21 or its agent contacts the property owner to commence  
22 negotiations, a copy of the appraisal in its entirety upon  
23 such real property or interest in such real property prepared  
24 for the acquiring agency or its agent, which shall include, at  
25 a minimum, an itemization of the appraised value of the real  
26 property or interest in the property, any buildings on the  
27 property, all other improvements including fences, severance  
28 damages, and loss of access. The appraisal sent to the  
29 condemnee shall be that appraisal upon which the condemnor  
30 will rely to establish an amount which the condemnor believes  
31 to be just compensation for the real property. All other  
32 appraisals made on the property as a result of the  
33 condemnation proceeding shall be made available to the  
34 condemnee upon request. In lieu of an appraisal, a utility or  
35 person under the jurisdiction of the utilities board of the

1 department of commerce, or any other utility conferred the  
2 right by statute to condemn private property, shall provide in  
3 writing by certified mail to the owner of record thirty days  
4 prior to negotiations, the methods and factors used in  
5 arriving at an offered price for voluntary easements including  
6 the range of cash amount of each component. An acquiring  
7 agency may obtain a signed written waiver from the landowner  
8 to allow negotiations to commence prior to the expiration of  
9 the applicable waiting period for the commencement of  
10 negotiations.

11 Sec. 20. Section 6B.57, Code Supplement 1999, is amended  
12 to read as follows:

13 6B.57 PROCEDURAL COMPLIANCE.

14 If ~~a city~~ an acquiring agency makes a good faith effort to  
15 serve, send, or provide the notices or documents required  
16 under this chapter to the owner of private property that is or  
17 may be the subject of condemnation, but fails to provide the  
18 notice or documents to the owner, such failure shall not  
19 constitute grounds for invalidation of the condemnation  
20 proceeding if the chief judge of the judicial district  
21 determines that such failure can be corrected by delaying the  
22 condemnation proceedings to allow compliance with the  
23 requirement and or such failure does not unreasonably  
24 prejudice the owner.

25 Sec. 21. Section 478.2, unnumbered paragraphs 2 and 5,  
26 Code 1999, are amended to read as follows:

27 As conditions precedent to the filing of a petition with  
28 the utilities board requesting a franchise for a new  
29 transmission line, and not less than thirty days prior to the  
30 filing of such petition, the person, company, or corporation  
31 shall hold informational meetings in each county in which real  
32 property or rights therein will be affected. A member of the  
33 board, the counsel of the board, or a hearing examiner  
34 designated by the board shall serve as the presiding officer  
35 at each meeting and, shall present an agenda for such meeting

1 which shall include a summary of the legal rights of the  
2 affected landowners, and shall distribute and review the  
3 statement of individual rights required under section 6B.2A,  
4 subsection 1. No A formal record of the meeting shall not be  
5 required.

6 The notice shall set forth the name of the applicant; state  
7 the applicant's principal place of business; state the general  
8 description and purpose of the proposed project; state the  
9 general nature of the ~~right-of-way~~ right-of-way desired; state  
10 the possibility that the right-of-way may be acquired by  
11 condemnation if approved by the utilities board; provide a map  
12 showing the route of the proposed project; provide a  
13 description of the process used by the utilities board in  
14 making a decision on whether to approve a franchise or grant  
15 the right to take property by eminent domain; advise that the  
16 landowner has the right to be present at such meetings and to  
17 file objections with the utilities board; designate the place  
18 and time of the meeting; be served not less than thirty days  
19 prior to the time set for the meeting by certified mail with  
20 return receipt requested; and be published once in a newspaper  
21 of general circulation in the county at least one week and not  
22 more than three weeks before the time of the meeting and such  
23 publication shall be considered notice to landowners whose  
24 residence is not known.

25 Sec. 22. Section 478.6, unnumbered paragraph 2, Code 1999,  
26 is amended to read as follows:

27 Where a petition seeks the use of the right of eminent  
28 domain over specific parcels of real property, the board shall  
29 prescribe the notice to be served upon the owners of record  
30 and parties in possession of ~~said~~ the property over which the  
31 use of the right of eminent domain is sought. The notice  
32 shall include the statement of individual rights required  
33 pursuant to section 6B.2A, subsection 1.

34 Sec. 23. Section 479.46, subsection 3, unnumbered  
35 paragraph 2, Code 1999, is amended to read as follows:

1     ~~Sections-6B-10-to-6B-13-apply-to-this-notice.~~ If more than  
2 one landowner petitions the county board of supervisors, the  
3 application to the chief judge, notice to the pipeline  
4 company, and appraisalment of damages shall be consolidated  
5 into one application, notice, and appraisalment. The county  
6 attorney may assist in coordinating the consolidated  
7 application and notice, but does not become an attorney for  
8 the landowners by doing so.

9     Sec. 24. Section 479A.25, subsection 3, unnumbered  
10 paragraph 2, Code 1999, is amended to read as follows:

11     ~~Sections-6B-10-to-6B-13-apply-to-this-notice.~~ If more than  
12 one landowner petitions the county board of supervisors, the  
13 application to the chief judge, notice to the pipeline  
14 company, and appraisalment of damages shall be consolidated  
15 into one application, notice, and appraisalment. The county  
16 attorney may assist in coordinating the consolidated  
17 application and notice, but does not become an attorney for  
18 the landowners by doing so.

19     Sec. 25. Section 479B.30, subsection 3, unnumbered  
20 paragraph 2, Code 1999, is amended to read as follows:

21     ~~Sections-6B-10-to-6B-13-apply-to-this-notice.~~ If more than  
22 one landowner petitions the county board of supervisors, the  
23 application to the chief judge, notice to the pipeline  
24 company, and appraisalment of damages shall be consolidated  
25 into one application, notice, and appraisalment. The county  
26 attorney may assist in coordinating the consolidated  
27 application and notice, but does not become an attorney for  
28 the landowners by doing so.

29     Sec. 26. Section 6B.12, Code Supplement 1999, and section  
30 6B.13, Code 1999, are repealed.

31     Sec. 27. EFFECTIVE DATE. This Act, being deemed of  
32 immediate importance, takes effect upon enactment.

33

#### EXPLANATION

34     This bill makes several changes to the law relating to the  
35 condemnation of private property by an acquiring agency.

1 Code section 6B.1 is amended to provide that the Code  
2 chapter prescribing the condemnation process does not apply to  
3 property dedicated to an acquiring agency or to property  
4 obtained by an acquiring agency through voluntary negotiation  
5 and purchase.

6 Code section 6B.2A is amended to strike the requirement  
7 that an acquiring agency give notice of a proposed public  
8 improvement that may involve condemnation of property and  
9 replaces it with the requirement of a public hearing if  
10 agricultural land located outside a city may be acquired for a  
11 public improvement. The section is also amended to provide  
12 that the time deadlines do not apply during an emergency  
13 requiring construction or repair of public improvements.

14 Code section 6B.2B is amended to provide that if an  
15 acquiring agency offers to purchase the land for fair market  
16 value as determined by the agency, the agency has satisfied  
17 the requirement that it negotiate in good faith with the  
18 owner. Also, if an agency follows the acquisition policies as  
19 set forth in Code chapter 6B, the agency is conclusively  
20 presumed to have satisfied the requirement to negotiate in  
21 good faith.

22 Code section 6B.2C is enacted to provide that condemnation  
23 proceedings shall not begin until the governing body of the  
24 acquiring agency approves the use of condemnation and the  
25 acquiring agency has complied with applicable standards and  
26 obtained the necessary permits.

27 Code section 6B.3, which contains the requirements for  
28 condemnation applications, amends the requirement that the  
29 acquiring agency make a showing of the minimum amount of land  
30 necessary for the improvement and the amount of land to be  
31 condemned and provides that excess property may be condemned  
32 as an uneconomical remnant.

33 Code section 6B.4 is amended to provide that the condemner  
34 shall mail the list of compensation commissioners and  
35 alternates to the property owner. The condemner is also

1 required to publish the list.

2 Code section 6B.5 is amended to provide that if someone  
3 selected to serve on a compensation commission is unable to  
4 serve, the sheriff shall notify alternate commissioners in the  
5 order directed by the chief judge until a replacement is  
6 appointed. Also, the section is amended to allow parties to a  
7 condemnation to challenge appointment of a commissioner.

8 New Code section 6B.6 is enacted to require the sheriff to  
9 arrange the meeting of the compensation commission.

10 Code section 6B.7 is amended to remove the language on  
11 appointment and striking of commissioners.

12 Code section 6B.8 is amended to strike the 30-day notice of  
13 assessment and provides that the condemnation application and  
14 order shall be personally served on the property owner.

15 Code section 6B.11 is amended to strike the requirement  
16 that the sheriff publish the notice to the commissioners to  
17 proceed with an appraisal.

18 Code section 6B.14 is amended to provide that the  
19 compensation commission may meet in open session to view the  
20 property and receive evidence, but may deliberate in closed  
21 session. During closed session deliberations, commissioners  
22 are prohibited from communicating with any party to the action  
23 unless the other party consents. The section is also amended  
24 to provide that a commissioner may not communicate with a  
25 party to the action prior to the open meeting.

26 Code section 6B.25 is amended to provide that a property  
27 owner may apply to the court for release of a portion of  
28 damages prior to expiration of the time for appeal.

29 Code section 6B.33 is amended to increase the per diem for  
30 compensation commission members from \$50 to \$200.

31 Code section 6B.45 is amended to require that an acquiring  
32 agency secure a copy of an appraisal of land to be condemned  
33 and provide a copy of the appraisal to the property owner at  
34 least 10 days before the acquiring agency contacts the  
35 property owner to begin negotiations.

1 Code section 6B.57 is amended to add all acquiring agencies  
2 to the procedural compliance section. Currently, only cities  
3 are covered by this section which provides that a procedural  
4 error in providing notices for a condemnation action is not  
5 fatal to the action if the error can be corrected or if it  
6 does not unreasonably prejudice the property owner.

7 Code sections 6B.12 and 6B.13, relating to service of  
8 notice, are repealed and repeated elsewhere in Code chapter  
9 6B.

10 The bill makes related conforming amendments to Code  
11 sections 479.46, 479A.25, and 479B.30.

12 The bill makes corresponding amendments to Code sections  
13 478.2 and 478.6 to add the statement of individual rights to  
14 the information to be mailed with the notice to the landowner  
15 by the utility and to be provided at the informational meeting  
16 held on the project.

17 The bill also amends Code section 478.2 to require that the  
18 notice of informational meeting provide a description of the  
19 process followed by the utility when granting a franchise or  
20 condemning property and state the possibility that the right-  
21 of-way may be acquired by condemnation.

22 The bill also amends Code section 478.6 to require that the  
23 statement of individual rights be mailed to each landowner  
24 along with the notice of hearing on condemnation required by  
25 that section.

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HOUSE FILE 2528

H-8179

- 1 Amend House File 2528 as follows:
- 2 1. Page 7, by striking lines 10 through 12.
- 3 2. Page 10, by striking lines 7 through 16.
- 4 3. Page 10, by striking lines 25 and 26, and
- 5 inserting the following: "and to receive evidence.
- 6 The commission".
- 7 4. By renumbering as necessary.

By JOHNSON of Osceola

H-8179 FILED MARCH 6, 2000

*lost 3/7/00 (p. 582)*

HOUSE FILE 2528

H-8197

- 1 Amend House File 2528 as follows:
- 2 1. Page 1, line 22, by inserting after the words
- 3 "to the" the following: "fee simple".
- 4 2. Page 1, line 23, by striking the words "or
- 5 property interest".
- 6 3. Page 5, by inserting after line 32, the
- 7 following:
- 8 "Sec. \_\_\_\_ Section 6B.3, subsection 2, Code
- 9 Supplement 1999, is amended by striking the subsection
- 10 and inserting in lieu thereof the following:
- 11 2. The applicant shall mail a copy of the
- 12 application by certified mail to the owner at the
- 13 owner's last known address and to any record
- 14 lienholder or encumbrancer of the property at the
- 15 lienholder's or encumbrancer's last known address.
- 16 The applicant shall also cause the application to be
- 17 published once in a newspaper of general circulation
- 18 in the county, not less than four nor more than twenty
- 19 days before the meeting of the compensation commission
- 20 to assess the damages. Service of the application by
- 21 publication shall be deemed complete on the day of
- 22 publication.
- 23 In lieu of mailing and publishing the application,
- 24 the applicant may cause the application to be served
- 25 upon the owner, lienholders, and encumbrancers of the
- 26 property in the manner provided by the Iowa rules of
- 27 civil procedure for the personal service of original
- 28 notice. The application shall be mailed and published
- 29 or served, as above provided, prior to or
- 30 contemporaneously with the mailing and publication or
- 31 service of the list of compensation commissioners as
- 32 provided in section 6B.4."
- 33 4. Page 10, line 20, by striking the word "open".
- 34 5. Page 10, line 25, by striking the word "may"
- 35 and inserting the following: "shall".
- 36 6. By renumbering as necessary.

By FALLON of Polk

H-8197 FILED MARCH 6, 2000

*A. lost 3/7/00*

*B. adopted 3/7/00 (p. 581)*

## HOUSE FILE 2528

H-8213

- 1 Amend the amendment, H-8197, to House File 2528 as  
 2 follows:  
 3 1. Page 1, by inserting after line 5 the  
 4 following:  
 5 "\_\_\_\_. Page 4, by striking lines 20 through 28."  
 By HUSER of Polk  
 DIX of Butler

H-8213 FILED MARCH 7, 2000

*dot*  
 3/7/00 (p. 581)

## HOUSE FILE 2528

H-8214

- 1 Amend the amendment, H-8197, to House File 2528 as  
 2 follows:  
 3 1. Page 1, by inserting after line 1, the  
 4 following:  
 5 "\_\_\_\_. Page 1, lines 14 and 15, by striking the  
 6 words "private-property agricultural land" and  
 7 inserting the following: "private property."  
 8 2. By renumbering as necessary.  
 By HUSER of Polk  
 DIX of Butler

H-8214 FILED MARCH 7, 2000

*W/D*  
 3/7/00 (p. 580)

## HOUSE FILE 2528

H-8227

- 1 Amend the amendment, H-8197, to House File 2528 as  
 2 follows:  
 3 1. Page 1, by inserting after line 1, the  
 4 following:  
 5 "\_\_\_\_. Page 1, lines 14 and 15, by striking the  
 6 words "private-property agricultural land" and  
 7 inserting the following: "private property."  
 8 2. Page 3, line 18, by striking the words  
 9 "agricultural land" and inserting the following:  
 10 "private property".  
 11 3. By renumbering as necessary.  
 By HUSER of Polk  
 DIX of Butler  
 MUNDIE of Webster

H-8227 FILED MARCH 7, 2000

*W/D* 3/7/00  
 (p. 580)

## HOUSE FILE 2528

H-8234

- 1 Amend the amendment, H-8197, to House File 2528 as  
 2 follows:  
 3 1. Page 1, by inserting after line 5 the  
 4 following:  
 5 "\_\_\_\_. Page 4, line 22, by striking the figure  
 6 "4." and inserting the following: "5."  
 By FALLON of Polk

H-8234 FILED MARCH 7, 2000

*Adopted* 3/7/00  
 (p. 581)

HOUSE FILE 2528

H-8198

- 1 Amend House File 2528 as follows:
- 2 1. Page 1, lines 14 and 15, by striking the words
- 3 "~~private-property agricultural land~~" and inserting the
- 4 following: "private property".

By HUSER of Polk  
DIX of Butler  
MUNDIE of Webster

H-8198 FILED MARCH 7, 2000

*w/d*

*3/7/00 (p. 580)*

HOUSE FILE 2528

H-8246

- 1 Amend the amendment, H-8197, to House File 2528 as
- 2 follows:
- 3 1. Page 1, by inserting after line 1, the
- 4 following:
- 5 "\_\_\_\_". Page 1, lines 14 and 15, by striking the
- 6 words "~~private-property agricultural land~~" and
- 7 inserting the following: "private property".
- 8 2. Page 1, by inserting after line 5 the
- 9 following:
- 10 "\_\_\_\_". Page 3, line 18, by striking the words
- 11 "agricultural land" and inserting the following:
- 12 "private property".
- 13 3. By renumbering as necessary.

By HUSER of Polk  
DIX of Butler  
MUNDIE of Webster

H-8246 FILED MARCH 7, 2000

*Lost*

*3/7/00*

*(p. 580)*

S.  
S-3/15/00 Amend/ doo Pan  
W/SS140  
S-3/23/00 Unfinished  
Business  
Calendar

HOUSE FILE **2528**  
BY COMMITTEE ON LOCAL  
GOVERNMENT

(SUCCESSOR TO HSB 747)

(As Amended and Passed by the House, March 7, 2000)

Passed House, <sup>(P.1355)</sup> Date 4-10-00 Passed Senate, <sup>P.1007</sup> Date 4-5-00  
Vote: Ayes 93 Nays 0 Vote: Ayes 48 Nays 0  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to the condemnation of private property for  
2 certain public purposes and providing an effective date.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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House Amendments \_\_\_\_\_

Deleted Language \*

HF 2528

1 Section 1. Section 6B.1, Code 1999, is amended to read as  
2 follows:

3 6B.1 PROCEDURE PROVIDED.

4 The procedure for the condemnation of private property for  
5 works of internal improvement, and for other public projects,  
6 uses and, or purposes, unless and except as otherwise provided  
7 by law, shall be in accordance with the provisions of this  
8 chapter. This chapter shall not apply to the dedication of  
9 property to an acquiring agency or to the voluntary  
10 negotiation and purchase of property by an acquiring agency.

11 Sec. 2. Section 6B.2A, subsection 1, Code Supplement 1999,  
12 is amended to read as follows:

13 1. An acquiring agency shall provide written notification  
14 notice of a public hearing to each owner of record of private  
15 property agricultural land that may be the subject of  
16 condemnation. The authority under this chapter is not  
17 conferred and condemnation proceedings shall not begin unless  
18 a good faith effort is made to serve mail and publish the  
19 notice as provided in this section on the owner of record of  
20 the property subject to condemnation. The notice shall be  
21 mailed by ordinary mail, not less than thirty days before the  
22 date the hearing is held, to the owner of record's record of  
23 each property or property interest at the owner's last known  
24 address no-less-than-thirty-days as shown in the records of  
25 the county auditor not less than seven days nor more than  
26 fourteen days prior to the date of mailing. A change in  
27 ownership of any such property which is not reflected in the  
28 records of the county auditor during the period those records  
29 are searched as above provided shall not affect the validity  
30 of the notice or any condemnation proceeding commenced on the  
31 basis of such notice. The notice shall be given and the  
32 public hearing held before adoption of the ordinance,  
33 resolution, motion, or other declaration of intent to proceed  
34 with fund the site-specific design for the public improvement,  
35 to make the final selection of the route or site location for

1 the public improvement ~~and-the-acquisition-or-condemnation,~~ or  
2 to acquire or condemn, if necessary, all or a portion of the  
3 property or an interest in the property for the public  
4 improvement. If the location of the public improvement is  
5 changed or expanded after the decision has been made to  
6 proceed with the public improvement, a notice shall be mailed  
7 by ordinary mail no less than thirty days before the adoption  
8 of the ordinance, resolution, motion, or other declaration of  
9 intent to proceed with a change in the location of the public  
10 improvement to the owner of record of the land to be acquired  
11 or condemned, if necessary, in the new location of the public  
12 improvement affected by the change. ~~The-notice-shall-include~~  
13 ~~the-statement-of-individual-rights-required-under-section~~  
14 6B-2B: The mailed notice shall, at a minimum, include the  
15 following information:

16 a. The general nature of the public improvement.

17 b. ~~The-acquiring-agency's-intended-use-of-the-private~~  
18 property A statement of the possibility that the acquiring  
19 agency may acquire part or all of the property or interest in  
20 the property by condemnation for the public improvement.

21 c. The process to be followed by the acquiring agency in  
22 making the decision to ~~proceed-with-the-public-improvement-and~~  
23 ~~the-acquisition-or-condemnation~~ fund the site-specific design  
24 for the public improvement, to make the final selection of the  
25 route or site location, or to acquire or condemn, if  
26 necessary, all or a portion of the property or an interest in  
27 the property for public improvement.

28 d. The time, and place, and manner of a public hearing at  
29 which an opportunity is provided for public input into the  
30 decision to ~~proceed-with-the-public-improvement-and-the~~  
31 ~~acquisition-or-condemnation~~ fund the site-specific design for  
32 the public improvement, to make the final selection of the  
33 route or site location, or to acquire or condemn, if  
34 necessary, all or a portion of the property or an interest in  
35 the property for the public improvement.

1 e. ~~The-current-status-in-the-planning-process-for-the~~  
2 ~~public-improvement,-including-meetings-held-and-decisions-made~~  
3 The name, address, and telephone number of the person  
4 designated by the acquiring agency as the person to contact  
5 regarding the public improvement.

6 f. A statement of rights of individual property owners  
7 with respect to the acquisition of their property and the  
8 availability of relocation benefits. The attorney general  
9 shall adopt by rule pursuant to chapter 17A a statement of  
10 rights which may be used in substantial form by any person  
11 required to provide the statement of rights as provided in  
12 this section.

13 Sec. 3. Section 6B.2A, subsections 2 and 3, Code  
14 Supplement 1999, are amended by striking the subsections and  
15 inserting in lieu thereof the following:

16 2. The acquiring agency shall cause a notice to be  
17 published once in a newspaper of general circulation in the  
18 county or city where the agricultural land is located. The  
19 notice should be published at least four but no more than  
20 twenty days before adoption of the ordinance, resolution,  
21 motion, or other declaration of intent to fund the site-  
22 specific design for the public improvement, make the final  
23 selection of the route or site location for the public  
24 improvement, or to acquire or condemn, if necessary, part or  
25 all of the property or an interest in the property for the  
26 public improvement. The published notice shall, at a minimum,  
27 include the following information:

28 a. The general nature of the public improvement.

29 b. A statement of the possibility that the acquiring  
30 agency may acquire part or all of the property or an interest  
31 in the property by condemnation for the public improvement.

32 c. The process to be followed by the acquiring agency in  
33 making the decision to fund the site-specific design for the  
34 public improvement, to make the final selection of the route  
35 or site location, or to acquire or condemn, if necessary, all

1 or a portion of the property or an interest in the property  
2 for the public improvement.

3 d. The time and place of a public hearing at which an  
4 opportunity is provided for public input into the decision to  
5 fund the site specific design for the public improvement, to  
6 make the final selection of the route or site location, or to  
7 acquire or condemn, if necessary, all or a portion of the  
8 property or an interest in the property for the public  
9 improvement.

10 e. The name, address, and telephone number of the contact  
11 person regarding the public improvement.

12 3. If the acquiring agency is a person required to obtain  
13 a franchise under chapter 478, compliance with section 478.2  
14 shall satisfy the notice requirements of this section.

15 4. This section shall not apply to a condemnation of  
16 property by the state department of transportation for right-  
17 of-way that is contiguous to an existing road right-of-way and  
18 necessary for the maintenance, safety improvement, or repair  
19 of the existing road.

20 Sec. 4. Section 6B.2A, Code Supplement 1999, is amended by  
21 adding the following new subsection:

22 NEW SUBSECTION. 5. The time deadlines in this section do  
23 not apply during the existence of an emergency requiring the  
24 construction or repair of public improvements in situations  
25 where failure to immediately construct or repair would result  
26 in immediate danger to public health, safety, or welfare. The  
27 notices required in this section shall be provided to the  
28 owner as soon as practicable.

29 Sec. 5. Section 6B.2B, subsection 1, Code Supplement 1999,  
30 is amended to read as follows:

31 1. The acquiring agency shall make a good faith effort to  
32 negotiate with the owner to purchase the private property or  
33 property interest before filing an application for  
34 condemnation or otherwise proceeding with the condemnation  
35 process. An acquiring agency shall not make an offer to

1 purchase the property or property interest that is less than  
2 the fair market value the acquiring agency has established for  
3 the property or property interest pursuant to the appraisal  
4 required in section 6B.45. However, an acquiring agency need  
5 not make an offer in excess of that amount in order to satisfy  
6 the requirement to negotiate in good faith. An acquiring  
7 agency is deemed to have met the requirements of this section  
8 if the acquiring agency complies with section 6B.54.

9 Sec. 6. Section 6B.2B, subsection 2, Code Supplement 1999,  
10 is amended by striking the subsection.

11 Sec. 7. NEW SECTION. 6B.2C APPROVAL OF THE PUBLIC  
12 IMPROVEMENT.

13 The authority to condemn is not conferred, and the  
14 condemnation proceedings shall not commence, unless the  
15 governing body for the acquiring agency approves the use of  
16 condemnation and there is a reasonable expectation the  
17 applicant will be able to achieve its public purpose, comply  
18 with all applicable standards, and obtain the necessary  
19 permits.

20 Sec. 8. Section 6B.3, subsection 1, paragraph g, Code  
21 Supplement 1999, is amended to read as follows:

22 g. A showing of the minimum amount of land necessary to  
23 achieve the public purpose and the amount of land to be  
24 acquired by condemnation for the public improvement. Any land  
25 to be acquired by condemnation beyond the necessary minimum to  
26 complete the project shall be presumed not to be necessary for  
27 a public use or public purpose unless the applicant can show  
28 that a substantial need exists for the additional property to  
29 achieve the public use or public purpose, or that the land in  
30 question ~~is of~~ constitutes an uneconomical remnant that has  
31 little or no value or utility to the owner, or that the owner  
32 consents to the condemnation.

33 Sec. 9. Section 6B.3, subsection 2, Code Supplement 1999,  
34 is amended by striking the subsection and inserting in lieu  
35 thereof the following:

1     2. The applicant shall mail a copy of the application by  
2 certified mail to the owner at the owner's last known address  
3 and to any record lienholder or encumbrancer of the property  
4 at the lienholder's or encumbrancer's last known address. The  
5 applicant shall also cause the application to be published  
6 once in a newspaper of general circulation in the county, not  
7 less than four nor more than twenty days before the meeting of  
8 the compensation commission to assess the damages. Service of  
9 the application by publication shall be deemed complete on the  
10 day of publication.

11     In lieu of mailing and publishing the application, the  
12 applicant may cause the application to be served upon the  
13 owner, lienholders, and encumbrancers of the property in the  
14 manner provided by the Iowa rules of civil procedure for the  
15 personal service of original notice. The application shall be  
16 mailed and published or served, as above provided, prior to or  
17 contemporaneously with the mailing and publication or service  
18 of the list of compensation commissioners as provided in  
19 section 6B.4.

20     Sec. 10. Section 6B.4, unnumbered paragraph 2, Code  
21 Supplement 1999, is amended to read as follows:

22     The chief judge of the judicial district or the chief  
23 judge's designee shall select by lot six persons from the  
24 list, two persons who are owner-operators of agricultural  
25 property when the property to be condemned is agricultural  
26 property; two persons who are owners of city property when the  
27 property to be condemned is other than agricultural property;  
28 and two persons from each of the remaining two representative  
29 groups, who shall constitute a compensation commission to  
30 assess the damages to all property to be taken by the  
31 applicant and located in the county, and shall name a  
32 chairperson from the persons selected. The chief judge or the  
33 judge's designee may appoint such alternate members and  
34 chairpersons to the commission as are deemed necessary and  
35 appropriate under the circumstances. A person shall not be

1 selected as a member or alternate member of the compensation  
2 commission if the person possesses any interest in the  
3 proceeding which would cause the person to render a biased  
4 decision. ~~The clerk of the district court shall send by~~  
5 ~~ordinary mail a list of those persons selected to the~~  
6 ~~applicant and to the owner of the property at the owner's last~~  
7 ~~known address. The list shall be provided prior to the~~  
8 ~~mailing by any party of a notice of assessment under section~~  
9 ~~6B.8. If the clerk of the district court is unable to locate~~  
10 ~~an address for the owner of the property, the list shall be~~  
11 ~~published once in a newspaper of general circulation in the~~  
12 ~~county. The applicant shall reimburse the clerk of the~~  
13 ~~district court for the cost of mailing and publication. The~~  
14 applicant shall mail a copy of the list of commissioners and  
15 alternates appointed by the chief judge by certified mail to  
16 the property owner at the owner's last known address. The  
17 applicant shall also cause the list of commissioners and  
18 alternates to be published once in a newspaper of general  
19 circulation in the county, not less than four nor more than  
20 twenty days before the meeting of the compensation commission  
21 to assess the damages. Service of the list of commissioners  
22 and alternates by publication shall be deemed complete on the  
23 day of publication. In lieu of mailing and publishing the  
24 list of commissioners and alternates, the applicant may cause  
25 the list to be served upon the owner of the property in the  
26 manner provided by the Iowa rules of civil procedure for the  
27 personal service of original notice. The list of  
28 commissioners and alternates shall be mailed and published or  
29 served, as above provided, prior to or contemporaneously with  
30 service of the notice of assessment as provided in section  
31 6B.8.

32 Sec. 11. Section 6B.4, unnumbered paragraph 3, Code  
33 Supplement 1999, is amended by striking the unnumbered  
34 paragraph.

35 Sec. 12. Section 6B.5, Code 1999, is amended by striking

1 the section and inserting in lieu thereof the following:

2 6B.5 CHALLENGES TO COMMISSIONERS AND FILLING VACANCIES ON  
3 THE COMMISSION.

4 1. Persons appointed by the chief judge to serve on the  
5 compensation commission are excused from the commission if  
6 they are removed for cause, stricken by a challenge pursuant  
7 to this section, unavailable to serve on the commission, or  
8 fail to act in their capacity as commissioners.

9 2. The applicant may challenge one commissioner without  
10 stating cause and the person or persons representing the fee  
11 ownership interest in the property may challenge one  
12 commissioner without stating cause. A challenge to the  
13 appointment of a commissioner shall be filed, in writing, with  
14 the sheriff not less than 7 seven days prior to the meeting of  
15 the compensation commission, and shall be mailed to the other  
16 party by ordinary mail on the day of filing. An alternate  
17 commissioner may not be challenged without cause. A challenge  
18 filed less than seven days prior to the meeting of the  
19 commission shall have no effect.

20 3. If a person is excused from the commission, the sheriff  
21 shall select and notify, not less than twenty-four hours prior  
22 to the meeting, the alternate commissioners appointed for that  
23 condemnation proceeding, to complete the membership of the  
24 commission. Alternate commissioners selected and notified  
25 shall have the same qualifications as the person who is being  
26 replaced. If no alternates have been appointed, the chief  
27 judge of the judicial district shall appoint another person  
28 from the list, possessing the same qualifications as the  
29 person who is being replaced to complete the membership of the  
30 commission.

31 4. The sheriff shall notify alternate commissioners in the  
32 order directed by the chief judge, and the alternate  
33 commissioner first notified who is available to serve as a  
34 compensation commissioner shall serve in the place of the  
35 commissioner who was unable to serve or who was stricken from

1 the panel.

2 5. If a person is excused from the commission, the  
3 applicant and the property owner may stipulate in writing to  
4 the selection and notification of a particular alternate  
5 having the same qualifications as the person who is being  
6 replaced, to complete the membership of the commission. Such  
7 stipulation shall be filed with the sheriff not less than  
8 seventy-two hours prior to the meeting of the commission.

9 Sec. 13. NEW SECTION. 6B.6 SHERIFF TO COORDINATE MEETING  
10 OF COMMISSIONERS AND PROVIDE MEETING PLACE.

11 The sheriff of the county in which the property to be  
12 condemned is located shall coordinate the meeting of  
13 commissioners, shall arrange an appropriate meeting place for  
14 commissioners, shall assure that appointed commissioners  
15 receive the order of the court appointing them and directing  
16 their attendance at the meeting of commissioners, and shall  
17 report the unavailability or absence of appointed  
18 commissioners to the chief judge, to the applicant, and to the  
19 landowner.

20 Sec. 14. Section 6B.7, Code Supplement 1999, is amended to  
21 read as follows:

22 6B.7 COMMISSIONERS TO QUALIFY.

23 ~~Before proceeding with the assessment meeting to assess the~~  
24 ~~damages for the taking,~~ all commissioners shall qualify by  
25 filing with the sheriff a written oath that they will to the  
26 best of their ability faithfully and impartially assess  
27 damages and make a written report ~~containing the information~~  
28 ~~used by the commission in~~ assessing the damages to the  
29 sheriff. ~~The applicant or the owner may challenge one~~  
30 ~~commissioner without stating cause. A challenge to the~~  
31 ~~appointment of a commissioner must be made to the chief judge~~  
32 ~~of the judicial district no less than seventy-two hours before~~  
33 ~~the condemnation jury is set to meet. A commissioner shall be~~  
34 ~~appointed to fill a vacancy resulting from a challenge no less~~  
35 ~~than twenty-four hours before the jury is set to meet.~~

1       Sec. 15. Section 6B.8, Code Supplement 1999, is amended to  
2 read as follows:

3       6B.8 NOTICE OF ASSESSMENT.

4       The applicant, or the owner or any lienholder or  
5 encumbrancer of any land described in the application, may, at  
6 any time after the appointment of the commissioners, have the  
7 damages to the lands of any such owner assessed by giving the  
8 other party, if a resident of this state, thirty days' notice,  
9 in writing. The notice shall specify the day and the hour  
10 when the commissioners compensation commission will meet, view  
11 the premises, and assess the damages. The notice shall be  
12 personally served upon all necessary parties in the same  
13 manner as original notices provided by the Iowa rules of civil  
14 procedure for the personal service of original notice. If a  
15 city or county, or an agency of a city or county, is seeking  
16 to condemn agricultural land for an industry as that term is  
17 defined in section 260E.2, the notice shall inform the  
18 landowner that the landowner may request that the compensation  
19 commission review the application as provided in section  
20 6B.4A.

21       ~~Service of the notice to a person not a resident of this~~  
22 ~~state shall be by certified mail to the person's last known~~  
23 ~~address. At the same time, the applicant shall cause a notice~~  
24 ~~to be published once in a newspaper of general circulation in~~  
25 ~~the county prior to the day fixed for the appraisal, which~~  
26 ~~day shall be at least thirty days after publication. Service~~  
27 ~~of notice in this manner shall be deemed complete on the day~~  
28 ~~of publication.~~

29       Sec. 16. Section 6B.11, Code Supplement 1999, is amended  
30 to read as follows:

31       6B.11 FILING OF NOTICES AND RETURN OF SERVICE.

32       Notices, immediately after the service thereof, shall, with  
33 proper return of service endorsed thereon or attached thereto,  
34 be filed with the sheriff. The sheriff shall at once cause  
35 the commissioners to be notified of the day and hour when they

1 will be required to proceed with the appraisalment. The-notice  
2 to-the-commissioners-shall-also-be-published-by-the-sheriff  
3 pursuant-to-section-331:305-

4 Sec. 17. Section 6B.14, Code Supplement 1999, is amended  
5 by adding the following new unnumbered paragraph after  
6 unnumbered paragraph 1:

\* 7 NEW UNNUMBERED PARAGRAPH. Prior to the meeting of the  
8 commission, the commission or a commissioner shall not  
9 communicate with the applicant, property owner, or tenant, or  
10 their agents, regarding the condemnation proceedings. The  
11 commissioners shall meet in open session to view the property  
12 and to receive evidence, but shall deliberate in closed  
13 session. After closed session deliberations commence, the  
14 commission and each commissioner is prohibited from  
15 communicating with any party to the proceeding, unless such  
16 communication occurs in the presence of or with the consent of  
17 the property owner and the other parties who appeared before  
18 the commission.

19 Sec. 18. Section 6B.25, Code 1999, is amended to read as  
20 follows:

21 6B.25 RIGHT TO TAKE POSSESSION OF LANDS -- TITLE.

22 Upon the filing of the commissioners' report with the  
23 sheriff, the applicant may deposit with the sheriff the amount  
24 assessed in favor of a claimant, and the applicant, except as  
25 otherwise provided, may take possession of the land condemned  
26 and proceed with the improvement. An appeal from the  
27 assessment does not affect the right, except as otherwise  
28 provided. Prior to expiration of the time provided for  
29 appeal, the property owner may apply to the district court for  
30 release of that part of the damages deposited which the court  
31 finds proper. If there is not an appeal by any party, the  
32 property owner shall be entitled to the whole of the damages  
33 awarded. Upon appeal from the commissioners' award of damages  
34 the district court may direct that the part of the amount of  
35 damages deposited with the sheriff, as it finds just and

1 proper, be paid to the claimant. If upon trial of the appeal  
2 a lesser amount is awarded the difference between the amount  
3 so awarded and the amount paid shall be repaid by the person  
4 to whom it was paid and upon failure to make the repayment the  
5 party shall have judgment entered against the person who  
6 received the excess payment. Title to the property or the  
7 interests in property passes to the applicant when damages  
8 have been finally determined and paid.

9 Sec. 19. Section 6B.33, Code Supplement 1999, is amended  
10 to read as follows:

11 6B.33 COSTS AND ATTORNEY FEES.

12 The applicant shall pay all costs of the assessment made by  
13 the commissioners and reasonable attorney fees and costs  
14 incurred by the condemnee as determined by the commissioners  
15 if the award of the commissioners exceeds one hundred ten  
16 percent of the final offer of the applicant prior to  
17 condemnation. The applicant shall file with the sheriff an  
18 affidavit setting forth the most recent offer made to the  
19 person whose property is sought to be condemned. Members of  
20 such commissions shall receive a per diem of fifty two hundred  
21 dollars and actual and necessary expenses incurred in the  
22 performance of their official duties. The applicant shall  
23 reimburse the county sheriff for the per diem and expense  
24 amounts paid by the sheriff to the members. The applicant  
25 shall reimburse the owner for the expenses the owner incurred  
26 for recording fees, penalty costs for full or partial  
27 prepayment of any preexisting recorded mortgage entered into  
28 in good faith encumbering the property, and for similar  
29 expenses incidental to conveying the property to the  
30 applicant. The applicant shall also pay all costs occasioned  
31 by the appeal, including reasonable attorney fees to be taxed  
32 by the court, unless on the trial thereof the same or a lesser  
33 amount of damages is awarded than was allowed by the tribunal  
34 from which the appeal was taken.

35 Sec. 20. Section 6B.45, Code Supplement 1999, is amended

1 to read as follows:

2 6B.45 MAILING COPY OF APPRAISAL.

3 When any real property or interest in real property is to  
4 be purchased, or in lieu thereof to be condemned, the  
5 acquiring agency or its agent shall submit to the person,  
6 corporation, or entity whose property or interest in the  
7 property is to be taken, by ordinary mail, at least ten days  
8 prior to the date of contact upon which the acquiring agency  
9 or its agent contacts the property owner to commence  
10 negotiations, a copy of the appraisal in its entirety upon  
11 such real property or interest in such real property prepared  
12 for the acquiring agency or its agent, which shall include, at  
13 a minimum, an itemization of the appraised value of the real  
14 property or interest in the property, any buildings on the  
15 property, all other improvements including fences, severance  
16 damages, and loss of access. The appraisal sent to the  
17 condemnee shall be that appraisal upon which the condemnor  
18 will rely to establish an amount which the condemnor believes  
19 to be just compensation for the real property. All other  
20 appraisals made on the property as a result of the  
21 condemnation proceeding shall be made available to the  
22 condemnee upon request. In lieu of an appraisal, a utility or  
23 person under the jurisdiction of the utilities board of the  
24 department of commerce, or any other utility conferred the  
25 right by statute to condemn private property, shall provide in  
26 writing by certified mail to the owner of record thirty days  
27 prior to negotiations, the methods and factors used in  
28 arriving at an offered price for voluntary easements including  
29 the range of cash amount of each component. An acquiring  
30 agency may obtain a signed written waiver from the landowner  
31 to allow negotiations to commence prior to the expiration of  
32 the applicable waiting period for the commencement of  
33 negotiations.

34 Sec. 21. Section 6B.57, Code Supplement 1999, is amended  
35 to read as follows:

1 6B.57 PROCEDURAL COMPLIANCE.

2 If ~~a-city~~ an acquiring agency makes a good faith effort to  
3 serve, send, or provide the notices or documents required  
4 under this chapter to the owner of private property that is or  
5 may be the subject of condemnation, but fails to provide the  
6 notice or documents to the owner, such failure shall not  
7 constitute grounds for invalidation of the condemnation  
8 proceeding if the chief judge of the judicial district  
9 determines that such failure can be corrected by delaying the  
10 condemnation proceedings to allow compliance with the  
11 requirement and or such failure does not unreasonably  
12 prejudice the owner.

13 Sec. 22. Section 478.2, unnumbered paragraphs 2 and 5,  
14 Code 1999, are amended to read as follows:

15 As conditions precedent to the filing of a petition with  
16 the utilities board requesting a franchise for a new  
17 transmission line, and not less than thirty days prior to the  
18 filing of such petition, the person, company, or corporation  
19 shall hold informational meetings in each county in which real  
20 property or rights therein will be affected. A member of the  
21 board, the counsel of the board, or a hearing examiner  
22 designated by the board shall serve as the presiding officer  
23 at each meeting and, shall present an agenda for such meeting  
24 which shall include a summary of the legal rights of the  
25 affected landowners, and shall distribute and review the  
26 statement of individual rights required under section 6B.2A,  
27 subsection 1. ~~No~~ A formal record of the meeting shall not be  
28 required.

29 The notice shall set forth the name of the applicant; state  
30 the applicant's principal place of business; state the general  
31 description and purpose of the proposed project; state the  
32 general nature of the right-of-way right-of-way desired; state  
33 the possibility that the right-of-way may be acquired by  
34 condemnation if approved by the utilities board; provide a map  
35 showing the route of the proposed project; provide a

1 description of the process used by the utilities board in  
2 making a decision on whether to approve a franchise or grant  
3 the right to take property by eminent domain; advise that the  
4 landowner has the right to be present at such meetings and to  
5 file objections with the utilities board; designate the place  
6 and time of the meeting; be served not less than thirty days  
7 prior to the time set for the meeting by certified mail with  
8 return receipt requested; and be published once in a newspaper  
9 of general circulation in the county at least one week and not  
10 more than three weeks before the time of the meeting and such  
11 publication shall be considered notice to landowners whose  
12 residence is not known.

13 Sec. 23. Section 478.6, unnumbered paragraph 2, Code 1999,  
14 is amended to read as follows:

15 Where a petition seeks the use of the right of eminent  
16 domain over specific parcels of real property, the board shall  
17 prescribe the notice to be served upon the owners of record  
18 and parties in possession of ~~said~~ the property over which the  
19 use of the right of eminent domain is sought. The notice  
20 shall include the statement of individual rights required  
21 pursuant to section 6B.2A, subsection 1.

22 Sec. 24. Section 479.46, subsection 3, unnumbered  
23 paragraph 2, Code 1999, is amended to read as follows:

24 ~~Sections-6B-10-to-6B-13-apply-to-this-notice-~~ If more than  
25 one landowner petitions the county board of supervisors, the  
26 application to the chief judge, notice to the pipeline  
27 company, and appraisal of damages shall be consolidated  
28 into one application, notice, and appraisal. The county  
29 attorney may assist in coordinating the consolidated  
30 application and notice, but does not become an attorney for  
31 the landowners by doing so.

32 Sec. 25. Section 479A.25, subsection 3, unnumbered  
33 paragraph 2, Code 1999, is amended to read as follows:

34 ~~Sections-6B-10-to-6B-13-apply-to-this-notice-~~ If more than  
35 one landowner petitions the county board of supervisors, the

1 application to the chief judge, notice to the pipeline  
 2 company, and appraisement of damages shall be consolidated  
 3 into one application, notice, and appraisement. The county  
 4 attorney may assist in coordinating the consolidated  
 5 application and notice, but does not become an attorney for  
 6 the landowners by doing so.

7 Sec. 26. Section 479B.30, subsection 3, unnumbered  
 8 paragraph 2, Code 1999, is amended to read as follows:

9 ~~Sections 6B.10 to 6B.13 apply to this notice.~~ If more than  
 10 one landowner petitions the county board of supervisors, the  
 11 application to the chief judge, notice to the pipeline  
 12 company, and appraisement of damages shall be consolidated  
 13 into one application, notice, and appraisement. The county  
 14 attorney may assist in coordinating the consolidated  
 15 application and notice, but does not become an attorney for  
 16 the landowners by doing so.

17 Sec. 27. Section 6B.12, Code Supplement 1999, and section  
 18 6B.13, Code 1999, are repealed.

19 Sec. 28. EFFECTIVE DATE. This Act, being deemed of  
 20 immediate importance, takes effect upon enactment.

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 35

## HOUSE FILE 2528

S-5337

1 Amend House File 2528, as amended, passed, and  
2 reprinted by the House, as follows:  
3 1. Page 1, line 14, by inserting after the word  
4 "owner" the following: "and any contract purchaser".  
5 2. Page 1, line 19, by inserting after the word  
6 "owner" the following: "and any contract purchaser".  
7 3. Page 1, line 22, by inserting after the word  
8 "owner" the following: "and any contract purchaser".  
9 4. Page 1, line 23, by inserting after the word  
10 "owner's" the following: "and contract purchaser's".  
11 5. Page 1, line 34, by inserting after the words  
12 "fund the" the following: "final".  
13 6. Page 2, line 10, by inserting after the word  
14 "owner" the following: "and any contract purchaser".  
15 7. Page 2, line 23, by inserting after the words  
16 "fund the" the following: "final".  
17 8. Page 2, line 31, by inserting after the words  
18 "fund the" the following: "final".  
19 9. Page 3, line 19, by striking the word "should"  
20 and inserting the following: "shall".  
21 10. Page 3, by striking lines 20 through 26, and  
22 inserting the following: "twenty days before the  
23 public hearing is held as referred to in subsection 1.  
24 The published notice shall, at a minimum,".  
25 11. Page 3, line 33, by inserting after the words  
26 "fund the" the following: "final".  
27 12. Page 4, line 5, by striking the words "site  
28 specific" and inserting the following: "final site-  
29 specific".  
30 13. Page 4, line 14, by inserting after the word  
31 "section." the following: "If the acquiring agency is  
32 a person required to obtain a permit under chapter  
33 479, compliance with section 479.5 shall satisfy the  
34 notice requirements of this section."  
35 14. By striking page 10, line 29, through page  
36 11, line 3.  
37 15. Page 11, by inserting before line 4, the  
38 following:  
39 "Sec. \_\_\_\_ . Section 6B.14, unnumbered paragraph 1,  
40 Code Supplement 1999, is amended to read as follows:  
41 The commissioners shall, at the time fixed in the  
42 aforesaid notices, view the land sought to be  
43 condemned and assess the damages which the owner will  
44 sustain by reason of the appropriation, ~~and they.~~ The  
45 commission shall file their its written report, signed  
46 by all commissioners, with the sheriff. At the  
47 request of the condemner or the condemnee, the  
48 commission shall divide the damages into parts to  
49 indicate the value of any dwelling, the value of the  
50 land and improvements other than a dwelling, and the

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1 value of any additional damages. The appraisement and  
2 return may be in parcels larger than forty acres  
3 belonging to one person and lying in one tract, unless  
4 the agent or attorney of the applicant, or the  
5 commissioners, have actual knowledge that the tract  
6 does not belong wholly to the person in whose name it  
7 appears of record; and in case of such knowledge, the  
8 appraisement shall be made of the different portions  
9 as they are known to be owned."

10 16. Page 11, line 12, by striking the word  
11 "shall" and inserting the following: "may".

12 17. Page 11, line 13, by striking the words  
13 "closed session".

14 18. Page 11, line 18, by inserting after the word  
15 "commission." the following: "The commission shall  
16 keep minutes of all its meetings showing the date,  
17 time, and place, the members present, and the action  
18 taken at each meeting. The minutes shall show the  
19 results of each vote taken and information sufficient  
20 to indicate the vote of each member present. The vote  
21 of each member present shall be made public at the  
22 open session. The minutes shall be public records  
23 open to public inspection."

24 19. Page 14, line 4, by inserting after the word  
25 "owner" the following: "and any contract purchaser".

26 20. Page 14, line 6, by inserting after the word  
27 "owner" the following: "and any contract purchaser".

28 21. Page 14, line 12, by inserting after the word  
29 "owner" the following: "or any contract purchaser".

30 22. Page 15, by inserting after line 21, the  
31 following:

32 "Sec. \_\_\_\_\_. Section 479.5, unnumbered paragraphs 3  
33 and 6, Code 1999, are amended to read as follows:

34 A pipeline company shall hold informational  
35 meetings in each county in which real property or  
36 property rights will be affected at least thirty days  
37 prior to filing the petition for a new pipeline. A  
38 member of the board or a person designated by the  
39 board shall serve as the presiding officer at each  
40 meeting and, shall present an agenda for the meeting  
41 which shall include a summary of the legal rights of  
42 the affected landowners, and shall distribute and  
43 review the statement of individual rights required  
44 under section 6B.2A. No A formal record of the  
45 meeting shall not be required.

46 The notice shall set forth the name of the  
47 applicant; the applicant's principal place of  
48 business; the general description and purpose of the  
49 proposed project; the general nature of the right-of-  
50 way desired; the possibility that the right-of-way may

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1 be acquired by condemnation if approved by the  
2 utilities board; a map showing the route of the  
3 proposed project; a description of the process used by  
4 the utilities board in making a decision on whether to  
5 approve a permit including the right to take property  
6 by eminent domain; that the landowner has a right to  
7 be present at such meeting and to file objections with  
8 the board; and a designation of the time and place of  
9 the meeting;--and. The notice shall be served by  
10 certified mail with return receipt requested not less  
11 than thirty days previous to the time set for the  
12 meeting; and shall be published once in a newspaper of  
13 general circulation in the county. The publication  
14 shall be considered notice to landowners whose  
15 residence is not known and to each person in  
16 possession of or residing on the property provided a  
17 good faith effort to notify can be demonstrated by the  
18 pipeline company.

19 Sec. \_\_\_\_ . Section 479.7, Code 1999, is amended by  
20 adding the following new unnumbered paragraph:

21 NEW UNNUMBERED PARAGRAPH. Where a petition seeks  
22 the use of the right of eminent domain over specific  
23 parcels of real property, the board shall prescribe  
24 the notice to be served upon the owners of record and  
25 parties in possession of the property over which the  
26 use of the right of eminent domain is sought. The  
27 notice shall include the statement of individual  
28 rights required pursuant to section 6B.2A."

29 23. By renumbering as necessary.

By JEFF ANGELO

JOE BOLKCOM

RICHARD F. DRAKE

ANDY MCKEAN

STEVE KING

MATT MCCOY

S-5337 FILED APRIL 4, 2000

*Adopted*  
*4-5/00*  
*(P.1006)*

HOUSE FILE 2528

S-5140

- 1 Amend House File 2528, as amended, passed, and
- 2 reprinted by the House, as follows:
- 3 1. Page 7, by striking lines 32 through 34.
- 4 2. By striking page 10, line 29, through page 11,
- 5 line 3.
- 6 3. Page 11, by striking lines 12 and 13, and
- 7 inserting the following: "and to receive evidence,
- 8 and shall deliberate in open session. After
- 9 deliberations commence, the".
- 10 4. By renumbering as necessary.

By COMMITTEE ON LOCAL GOVERNMENT  
JEFF ANGELO, Chairperson

S-5140 FILED MARCH 14, 2000

*O/O*

*4/5/00 (p. 1006)*

HOUSE FILE 2528

S-5226

- 1 Amend House File 2528, as amended, passed, and
- 2 reprinted by the House, as follows:
- 3 1. Page 7, by striking lines 32 through 34.
- 4 2. By striking page 10, line 29, through page 11,
- 5 line 3.
- 6 3. Page 11, by striking lines 12 and 13, and
- 7 inserting the following: "and to receive evidence,
- 8 but may deliberate in closed session without complying
- 9 with section 21.5. After deliberations commence,
- 10 the".
- 11 4. By renumbering as necessary.

By JEFF ANGELO

S-5226 FILED MARCH 23, 2000

*O/O*

*4/5/00*

*(p. 1007)*

## SENATE AMENDMENT TO HOUSE FILE 2528

H-8739

1 Amend House File 2528, as amended, passed, and  
2 reprinted by the House, as follows:  
3 1. Page 1, line 14, by inserting after the word  
4 "owner" the following: "and any contract purchaser".  
5 2. Page 1, line 19, by inserting after the word  
6 "owner" the following: "and any contract purchaser".  
7 3. Page 1, line 22, by inserting after the word  
8 "owner" the following: "and any contract purchaser".  
9 4. Page 1, line 23, by inserting after the word  
10 "owner's" the following: "and contract purchaser's".  
11 5. Page 1, line 34, by inserting after the words  
12 "fund the" the following: "final".  
13 6. Page 2, line 10, by inserting after the word  
14 "owner" the following: "and any contract purchaser".  
15 7. Page 2, line 23, by inserting after the words  
16 "fund the" the following: "final".  
17 8. Page 2, line 31, by inserting after the words  
18 "fund the" the following: "final".  
19 9. Page 3, line 19, by striking the word "should"  
20 and inserting the following: "shall".  
21 10. Page 3, by striking lines 20 through 26, and  
22 inserting the following: "twenty days before the  
23 public hearing is held as referred to in subsection 1.  
24 The published notice shall, at a minimum,".  
25 11. Page 3, line 33, by inserting after the words  
26 "fund the" the following: "final".  
27 12. Page 4, line 5, by striking the words "site  
28 specific" and inserting the following: "final site-  
29 specific".  
30 13. Page 4, line 14, by inserting after the word  
31 "section." the following: "If the acquiring agency is  
32 a person required to obtain a permit under chapter  
33 479, compliance with section 479.5 shall satisfy the  
34 notice requirements of this section."  
35 14. By striking page 10, line 29, through page  
36 11, line 3.  
37 15. Page 11, by inserting before line 4, the  
38 following:  
39 "Sec. \_\_\_\_ . Section 6B.14, unnumbered paragraph 1,  
40 Code Supplement 1999, is amended to read as follows:  
41 The commissioners shall, at the time fixed in the  
42 aforesaid notices, view the land sought to be  
43 condemned and assess the damages which the owner will  
44 sustain by reason of the appropriation; ~~and they~~. The  
45 commission shall file ~~their~~ its written report, signed  
46 by all commissioners, with the sheriff. At the  
47 request of the condemner or the condemnee, the  
48 commission shall divide the damages into parts to  
49 indicate the value of any dwelling, the value of the  
50 land and improvements other than a dwelling, and the

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1 value of any additional damages. The appraisalment and  
2 return may be in parcels larger than forty acres  
3 belonging to one person and lying in one tract, unless  
4 the agent or attorney of the applicant, or the  
5 commissioners, have actual knowledge that the tract  
6 does not belong wholly to the person in whose name it  
7 appears of record; and in case of such knowledge, the  
8 appraisalment shall be made of the different portions  
9 as they are known to be owned."

10 16. Page 11, line 12, by striking the word  
11 "shall" and inserting the following: "may".

12 17. Page 11, line 13, by striking the words  
13 "closed session".

14 18. Page 11, line 18; by inserting after the word  
15 "commission." the following: "The commission shall  
16 keep minutes of all its meetings showing the date,  
17 time, and place, the members present, and the action  
18 taken at each meeting. The minutes shall show the  
19 results of each vote taken and information sufficient  
20 to indicate the vote of each member present. The vote  
21 of each member present shall be made public at the  
22 open session. The minutes shall be public records  
23 open to public inspection."

24 19. Page 14, line 4, by inserting after the word  
25 "owner" the following: "and any contract purchaser".

26 20. Page 14, line 6, by inserting after the word  
27 "owner" the following: "and any contract purchaser".

28 21. Page 14, line 12, by inserting after the word  
29 "owner" the following: "or any contract purchaser".

30 22. Page 15, by inserting after line 21, the  
31 following:

32 "Sec. \_\_\_\_ . Section 479.5, unnumbered paragraphs 3  
33 and 6, Code 1999, are amended to read as follows:

34 A pipeline company shall hold informational  
35 meetings in each county in which real property or  
36 property rights will be affected at least thirty days  
37 prior to filing the petition for a new pipeline. A  
38 member of the board or a person designated by the  
39 board shall serve as the presiding officer at each  
40 meeting and, shall present an agenda for the meeting  
41 which shall include a summary of the legal rights of  
42 the affected landowners, and shall distribute and  
43 review the statement of individual rights required  
44 under section 6B.2A. No A formal record of the  
45 meeting shall not be required.

46 The notice shall set forth the name of the  
47 applicant; the applicant's principal place of  
48 business; the general description and purpose of the  
49 proposed project; the general nature of the right-of-  
50 way desired; the possibility that the right-of-way may

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1 be acquired by condemnation if approved by the  
 2 utilities board; a map showing the route of the  
 3 proposed project; a description of the process used by  
 4 the utilities board in making a decision on whether to  
 5 approve a permit including the right to take property  
 6 by eminent domain; that the landowner has a right to  
 7 be present at such meeting and to file objections with  
 8 the board; and a designation of the time and place of  
 9 the meeting; -and. The notice shall be served by  
 10 certified mail with return receipt requested not less  
 11 than thirty days previous to the time set for the  
 12 meeting; and shall be published once in a newspaper of  
 13 general circulation in the county. The publication  
 14 shall be considered notice to landowners whose  
 15 residence is not known and to each person in  
 16 possession of or residing on the property provided a  
 17 good faith effort to notify can be demonstrated by the  
 18 pipeline company.

19 Sec. \_\_\_\_ . Section 479.7, Code 1999, is amended by  
 20 adding the following new unnumbered paragraph:

21 NEW UNNUMBERED PARAGRAPH. Where a petition seeks  
 22 the use of the right of eminent domain over specific  
 23 parcels of real property, the board shall prescribe  
 24 the notice to be served upon the owners of record and  
 25 parties in possession of the property over which the  
 26 use of the right of eminent domain is sought. The  
 27 notice shall include the statement of individual  
 28 rights required pursuant to section 6B.2A."

29 23. By renumbering as necessary.

RECEIVED FROM THE SENATE

H-8739 FILED APRIL 5, 2000

*House Concurred*  
*4-10-00*  
*(P.1355)*

HOUSE FILE 2528

AN ACT

RELATING TO THE CONDEMNATION OF PRIVATE PROPERTY FOR CERTAIN  
PUBLIC PURPOSES AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 6B.1, Code 1999, is amended to read as follows:

6B.1 PROCEDURE PROVIDED.

The procedure for the condemnation of private property for works of internal improvement, and for other public projects, uses and, or purposes, unless and except as otherwise provided by law, shall be in accordance with the provisions of this chapter. This chapter shall not apply to the dedication of property to an acquiring agency or to the voluntary negotiation and purchase of property by an acquiring agency.

Sec. 2. Section 6B.2A, subsection 1, Code Supplement 1999, is amended to read as follows:

1. An acquiring agency shall provide written notification notice of a public hearing to each owner and any contract purchaser of record of private-property agricultural land that may be the subject of condemnation. The authority under this chapter is not conferred and condemnation proceedings shall not begin unless a good faith effort is made to serve mail and publish the notice as provided in this section on the owner and any contract purchaser of record of the property subject to condemnation. The notice shall be mailed by ordinary mail, not less than thirty days before the date the hearing is held,

to the owner and any contract purchaser of record's record of each property or property interest at the owner's and contract purchaser's last known address no-less-than-thirty-days as shown in the records of the county auditor not less than seven days nor more than fourteen days prior to the date of mailing. A change in ownership of any such property which is not reflected in the records of the county auditor during the period those records are searched as above provided shall not affect the validity of the notice or any condemnation proceeding commenced on the basis of such notice. The notice shall be given and the public hearing held before adoption of the ordinance, resolution, motion, or other declaration of intent to proceed with fund the final site-specific design for the public improvement, to make the final selection of the route or site location for the public improvement and the acquisition-or-condemnation, or to acquire or condemn, if necessary, all or a portion of the property or an interest in the property for the public improvement. If the location of the public improvement is changed or expanded after the decision has been made to proceed with the public improvement, a notice shall be mailed by ordinary mail no less than thirty days before the adoption of the ordinance, resolution, motion, or other declaration of intent to proceed with a change in the location of the public improvement to the owner and any contract purchaser of record of the land to be acquired or condemned, if necessary, in the new location of the public improvement affected by the change. The-notice-shall-include the-statement-of-individual-rights-required-under-section 6B-2B: The mailed notice shall, at a minimum, include the following information:

- a. The general nature of the public improvement.
- b. The-acquiring-agency's-intended-use-of-the-private property A statement of the possibility that the acquiring agency may acquire part or all of the property or interest in the property by condemnation for the public improvement.

c. The process to be followed by the acquiring agency in making the decision to ~~proceed with the public improvement and the acquisition or condemnation fund the final site-specific design for the public improvement, to make the final selection of the route or site location, or to acquire or condemn, if necessary, all or a portion of the property or an interest in the property for public improvement.~~

d. The time ~~and place, and manner of a public hearing at~~ which an opportunity is provided for public input into the decision to ~~proceed with the public improvement and the acquisition or condemnation fund the final site-specific design for the public improvement, to make the final selection of the route or site location, or to acquire or condemn, if necessary, all or a portion of the property or an interest in the property for the public improvement.~~

e. ~~The current status in the planning process for the public improvement, including meetings held and decisions made. The name, address, and telephone number of the person designated by the acquiring agency as the person to contact regarding the public improvement.~~

f. A statement of rights of individual property owners with respect to the acquisition of their property and the availability of relocation benefits. The attorney general shall adopt by rule pursuant to chapter 17A a statement of rights which may be used in substantial form by any person required to provide the statement of rights as provided in this section.

Sec. 3. Section 6B.2A, subsections 2 and 3, Code Supplement 1999, are amended by striking the subsections and inserting in lieu thereof the following:

2. The acquiring agency shall cause a notice to be published once in a newspaper of general circulation in the county or city where the agricultural land is located. The notice shall be published at least four but no more than twenty days before the public hearing is held as referred to in subsection 1. The published notice shall, at a minimum, include the following information:

a. The general nature of the public improvement.

b. A statement of the possibility that the acquiring agency may acquire part or all of the property or an interest in the property by condemnation for the public improvement.

c. The process to be followed by the acquiring agency in making the decision to fund the final site-specific design for the public improvement, to make the final selection of the route or site location, or to acquire or condemn, if necessary, all or a portion of the property or an interest in the property for the public improvement.

d. The time and place of a public hearing at which an opportunity is provided for public input into the decision to fund the final site-specific design for the public improvement, to make the final selection of the route or site location, or to acquire or condemn, if necessary, all or a portion of the property or an interest in the property for the public improvement.

e. The name, address, and telephone number of the contact person regarding the public improvement.

3. If the acquiring agency is a person required to obtain a franchise under chapter 478, compliance with section 478.2 shall satisfy the notice requirements of this section. If the acquiring agency is a person required to obtain a permit under chapter 479, compliance with section 479.5 shall satisfy the notice requirements of this section.

4. This section shall not apply to a condemnation of property by the state department of transportation for right-of-way that is contiguous to an existing road right-of-way and necessary for the maintenance, safety improvement, or repair of the existing road.

Sec. 4. Section 6B.2A, Code Supplement 1999, is amended by adding the following new subsection:

NEW SUBSECTION. 5. The time deadlines in this section do not apply during the existence of an emergency requiring the construction or repair of public improvements in situations where failure to immediately construct or repair would result

in immediate danger to public health, safety, or welfare. The notices required in this section shall be provided to the owner as soon as practicable.

Sec. 5. Section 6B.2B, subsection 1, Code Supplement 1999, is amended to read as follows:

1. The acquiring agency shall make a good faith effort to negotiate with the owner to purchase the private property or property interest before filing an application for condemnation or otherwise proceeding with the condemnation process. An acquiring agency shall not make an offer to purchase the property or property interest that is less than the fair market value the acquiring agency has established for the property or property interest pursuant to the appraisal required in section 6B.45. However, an acquiring agency need not make an offer in excess of that amount in order to satisfy the requirement to negotiate in good faith. An acquiring agency is deemed to have met the requirements of this section if the acquiring agency complies with section 6B.54.

Sec. 6. Section 6B.2B, subsection 2, Code Supplement 1999, is amended by striking the subsection.

Sec. 7. NEW SECTION. 6B.2C APPROVAL OF THE PUBLIC IMPROVEMENT.

The authority to condemn is not conferred, and the condemnation proceedings shall not commence, unless the governing body for the acquiring agency approves the use of condemnation and there is a reasonable expectation the applicant will be able to achieve its public purpose, comply with all applicable standards, and obtain the necessary permits.

Sec. 8. Section 6B.3, subsection 1, paragraph g, Code Supplement 1999, is amended to read as follows:

g. A showing of the minimum amount of land necessary to achieve the public purpose and the amount of land to be acquired by condemnation for the public improvement. Any land to be acquired by condemnation beyond the necessary minimum to complete the project shall be presumed not to be necessary for

a public use or public purpose unless the applicant can show that a substantial need exists for the additional property to achieve the public use or public purpose, or that the land in question ~~is of~~ constitutes an uneconomical remnant that has little or no value or utility to the owner, or that the owner consents to the condemnation.

Sec. 9. Section 6B.3, subsection 2, Code Supplement 1999, is amended by striking the subsection and inserting in lieu thereof the following:

2. The applicant shall mail a copy of the application by certified mail to the owner at the owner's last known address and to any record lienholder or encumbrancer of the property at the lienholder's or encumbrancer's last known address. The applicant shall also cause the application to be published once in a newspaper of general circulation in the county, not less than four nor more than twenty days before the meeting of the compensation commission to assess the damages. Service of the application by publication shall be deemed complete on the day of publication.

In lieu of mailing and publishing the application, the applicant may cause the application to be served upon the owner, lienholders, and encumbrancers of the property in the manner provided by the Iowa rules of civil procedure for the personal service of original notice. The application shall be mailed and published or served, as above provided, prior to or contemporaneously with the mailing and publication or service of the list of compensation commissioners as provided in section 6B.4.

Sec. 10. Section 6B.4, unnumbered paragraph 2, Code Supplement 1999, is amended to read as follows:

The chief judge of the judicial district or the chief judge's designee shall select by lot six persons from the list, two persons who are owner-operators of agricultural property when the property to be condemned is agricultural property; two persons who are owners of city property when the property to be condemned is other than agricultural property;

and two persons from each of the remaining two representative groups, who shall constitute a compensation commission to assess the damages to all property to be taken by the applicant and located in the county, and shall name a chairperson from the persons selected. The chief judge or the judge's designee may appoint such alternate members and chairpersons to the commission as are deemed necessary and appropriate under the circumstances. A person shall not be selected as a member or alternate member of the compensation commission if the person possesses any interest in the proceeding which would cause the person to render a biased decision. ~~The clerk of the district court shall send, by ordinary mail, a list of those persons selected to the applicant and to the owner of the property at the owner's last known address. The list shall be provided prior to the mailing by any party, of a notice of assessment under section 6B.8. If the clerk of the district court is unable to locate an address for the owner of the property, the list shall be published once in a newspaper of general circulation in the county. The applicant shall reimburse the clerk of the district court for the cost of mailing and publication. The applicant shall mail a copy of the list of commissioners and alternates appointed by the chief judge by certified mail to the property owner at the owner's last known address. The applicant shall also cause the list of commissioners and alternates to be published once in a newspaper of general circulation in the county, not less than four nor more than twenty days before the meeting of the compensation commission to assess the damages. Service of the list of commissioners and alternates by publication shall be deemed complete on the day of publication. In lieu of mailing and publishing the list of commissioners and alternates, the applicant may cause the list to be served upon the owner of the property in the manner provided by the Iowa rules of civil procedure for the personal service of original notice. The list of commissioners and alternates shall be mailed and published or~~

served, as above provided, prior to or contemporaneously with service of the notice of assessment as provided in section 6B.8.

Sec. 11. Section 6B.4, unnumbered paragraph 3, Code Supplement 1999, is amended by striking the unnumbered paragraph.

Sec. 12. Section 6B.5, Code 1999, is amended by striking the section and inserting in lieu thereof the following:

6B.5 CHALLENGES TO COMMISSIONERS AND FILLING VACANCIES ON THE COMMISSION.

1. Persons appointed by the chief judge to serve on the compensation commission are excused from the commission if they are removed for cause, stricken by a challenge pursuant to this section, unavailable to serve on the commission, or fail to act in their capacity as commissioners.

2. The applicant may challenge one commissioner without stating cause and the person or persons representing the fee ownership interest in the property may challenge one commissioner without stating cause. A challenge to the appointment of a commissioner shall be filed, in writing, with the sheriff not less than seven days prior to the meeting of the compensation commission, and shall be mailed to the other party by ordinary mail on the day of filing. An alternate commissioner may not be challenged without cause. A challenge filed less than seven days prior to the meeting of the commission shall have no effect.

3. If a person is excused from the commission, the sheriff shall select and notify, not less than twenty-four hours prior to the meeting, the alternate commissioners appointed for that condemnation proceeding, to complete the membership of the commission. Alternate commissioners selected and notified shall have the same qualifications as the person who is being replaced. If no alternates have been appointed, the chief judge of the judicial district shall appoint another person from the list, possessing the same qualifications as the person who is being replaced to complete the membership of the commission.

4. The sheriff shall notify alternate commissioners in the order directed by the chief judge, and the alternate commissioner first notified who is available to serve as a compensation commissioner shall serve in the place of the commissioner who was unable to serve or who was stricken from the panel.

5. If a person is excused from the commission, the applicant and the property owner may stipulate in writing to the selection and notification of a particular alternate having the same qualifications as the person who is being replaced, to complete the membership of the commission. Such stipulation shall be filed with the sheriff not less than seventy-two hours prior to the meeting of the commission.

Sec. 13. NEW SECTION. 6B.6 SHERIFF TO COORDINATE MEETING OF COMMISSIONERS AND PROVIDE MEETING PLACE.

The sheriff of the county in which the property to be condemned is located shall coordinate the meeting of commissioners, shall arrange an appropriate meeting place for commissioners, shall assure that appointed commissioners receive the order of the court appointing them and directing their attendance at the meeting of commissioners, and shall report the unavailability or absence of appointed commissioners to the chief judge, to the applicant, and to the landowner.

Sec. 14. Section 6B.7, Code Supplement 1999, is amended to read as follows:

6B.7 COMMISSIONERS TO QUALIFY.

Before proceeding with the assessment meeting to assess the damages for the taking, all commissioners shall qualify by filing with the sheriff a written oath that they will to the best of their ability faithfully and impartially assess damages and make a written report containing the information used by the commission in assessing the damages to the sheriff. ~~The applicant or the owner may challenge one commissioner without stating cause. A challenge to the appointment of a commissioner must be made to the chief judge~~

~~of the judicial district no less than seventy-two hours before the condemnation jury is set to meet. A commissioner shall be appointed to fill a vacancy resulting from a challenge no less than twenty-four hours before the jury is set to meet.~~

Sec. 15. Section 6B.8, Code Supplement 1999, is amended to read as follows:

6B.8 NOTICE OF ASSESSMENT.

The applicant, or the owner or any lienholder or encumbrancer of any land described in the application, may, at any time after the appointment of the commissioners, have the damages to the lands of any such owner assessed by giving the other party, if a resident of this state, thirty days' notice, in writing. The notice shall specify the day and the hour when the commissioners compensation commission will meet, view the premises, and assess the damages. The notice shall be personally served upon all necessary parties in the same manner as original notices provided by the Iowa rules of civil procedure for the personal service of original notice. If a city or county, or an agency of a city or county, is seeking to condemn agricultural land for an industry as that term is defined in section 260E.2, the notice shall inform the landowner that the landowner may request that the compensation commission review the application as provided in section 6B.4A.

~~Service of the notice to a person not a resident of this state shall be by certified mail to the person's last known address. At the same time, the applicant shall cause a notice to be published once in a newspaper of general circulation in the county prior to the day fixed for the appraisal, which day shall be at least thirty days after publication. Service of notice in this manner shall be deemed complete on the day of publication.~~

Sec. 16. Section 6B.14, unnumbered paragraph 1, Code Supplement 1999, is amended to read as follows:

The commissioners shall, at the time fixed in the aforesaid notices, view the land sought to be condemned and assess the

damages which the owner will sustain by reason of the appropriation; ~~and they.~~ The commission shall file their its written report, signed by all commissioners, with the sheriff. At the request of the condemner or the condemnee, the commission shall divide the damages into parts to indicate the value of any dwelling, the value of the land and improvements other than a dwelling, and the value of any additional damages. The appraisalment and return may be in parcels larger than forty acres belonging to one person and lying in one tract, unless the agent or attorney of the applicant, or the commissioners, have actual knowledge that the tract does not belong wholly to the person in whose name it appears of record; and in case of such knowledge, the appraisalment shall be made of the different portions as they are known to be owned.

Sec. 17. Section 6B.14, Code Supplement 1999, is amended by adding the following new unnumbered paragraph after unnumbered paragraph 1:

NEW UNNUMBERED PARAGRAPH. Prior to the meeting of the commission, the commission or a commissioner shall not communicate with the applicant, property owner, or tenant, or their agents, regarding the condemnation proceedings. The commissioners shall meet in open session to view the property and to receive evidence, but may deliberate in closed session. After deliberations commence, the commission and each commissioner is prohibited from communicating with any party to the proceeding, unless such communication occurs in the presence of or with the consent of the property owner and the other parties who appeared before the commission. The commission shall keep minutes of all its meetings showing the date, time, and place, the members present, and the action taken at each meeting. The minutes shall show the results of each vote taken and information sufficient to indicate the vote of each member present. The vote of each member present shall be made public at the open session. The minutes shall be public records open to public inspection.

Sec. 18. Section 6B.25, Code 1999, is amended to read as follows:

6B.25 RIGHT TO TAKE POSSESSION OF LANDS -- TITLE.

Upon the filing of the commissioners' report with the sheriff, the applicant may deposit with the sheriff the amount assessed in favor of a claimant, and the applicant, except as otherwise provided, may take possession of the land condemned and proceed with the improvement. An appeal from the assessment does not affect the right, except as otherwise provided. Prior to expiration of the time provided for appeal, the property owner may apply to the district court for release of that part of the damages deposited which the court finds proper. If there is not an appeal by any party, the property owner shall be entitled to the whole of the damages awarded. Upon appeal from the commissioners' award of damages the district court may direct that the part of the amount of damages deposited with the sheriff, as it finds just and proper, be paid to the claimant. If upon trial of the appeal a lesser amount is awarded the difference between the amount so awarded and the amount paid shall be repaid by the person to whom it was paid and upon failure to make the repayment the party shall have judgment entered against the person who received the excess payment. Title to the property or the interests in property passes to the applicant when damages have been finally determined and paid.

Sec. 19. Section 6B.33, Code Supplement 1999, is amended to read as follows:

6B.33 COSTS AND ATTORNEY FEES.

The applicant shall pay all costs of the assessment made by the commissioners and reasonable attorney fees and costs incurred by the condemnee as determined by the commissioners if the award of the commissioners exceeds one hundred ten percent of the final offer of the applicant prior to condemnation. The applicant shall file with the sheriff an affidavit setting forth the most recent offer made to the person whose property is sought to be condemned. Members of

such commissions shall receive a per diem of fifty two hundred dollars and actual and necessary expenses incurred in the performance of their official duties. The applicant shall reimburse the county sheriff for the per diem and expense amounts paid by the sheriff to the members. The applicant shall reimburse the owner for the expenses the owner incurred for recording fees, penalty costs for full or partial prepayment of any preexisting recorded mortgage entered into in good faith encumbering the property, and for similar expenses incidental to conveying the property to the applicant. The applicant shall also pay all costs occasioned by the appeal, including reasonable attorney fees to be taxed by the court, unless on the trial thereof the same or a lesser amount of damages is awarded than was allowed by the tribunal from which the appeal was taken.

Sec. 20. Section 6B.45, Code Supplement 1999, is amended to read as follows:

6B.45 MAILING COPY OF APPRAISAL.

When any real property or interest in real property is to be purchased, or in lieu thereof to be condemned, the acquiring agency or its agent shall submit to the person, corporation, or entity whose property or interest in the property is to be taken, by ordinary mail, at least ten days prior to the date of contact upon which the acquiring agency or its agent contacts the property owner to commence negotiations, a copy of the appraisal in its entirety upon such real property or interest in such real property prepared for the acquiring agency or its agent, which shall include, at a minimum, an itemization of the appraised value of the real property or interest in the property, any buildings on the property, all other improvements including fences, severance damages, and loss of access. The appraisal sent to the condemnee shall be that appraisal upon which the condemnor will rely to establish an amount which the condemnor believes to be just compensation for the real property. All other appraisals made on the property as a result of the

condemnation proceeding shall be made available to the condemnee upon request. In lieu of an appraisal, a utility or person under the jurisdiction of the utilities board of the department of commerce, or any other utility conferred the right by statute to condemn private property, shall provide in writing by certified mail to the owner of record thirty days prior to negotiations, the methods and factors used in arriving at an offered price for voluntary easements including the range of cash amount of each component. An acquiring agency may obtain a signed written waiver from the landowner to allow negotiations to commence prior to the expiration of the applicable waiting period for the commencement of negotiations.

Sec. 21. Section 6B.57, Code Supplement 1999, is amended to read as follows:

6B.57 PROCEDURAL COMPLIANCE.

If a-city an acquiring agency makes a good faith effort to serve, send, or provide the notices or documents required under this chapter to the owner and any contract purchaser of private property that is or may be the subject of condemnation, but fails to provide the notice or documents to the owner and any contract purchaser, such failure shall not constitute grounds for invalidation of the condemnation proceeding if the chief judge of the judicial district determines that such failure can be corrected by delaying the condemnation proceedings to allow compliance with the requirement and or such failure does not unreasonably prejudice the owner or any contract purchaser.

Sec. 22. Section 478.2, unnumbered paragraphs 2 and 5, Code 1999, are amended to read as follows:

As conditions precedent to the filing of a petition with the utilities board requesting a franchise for a new transmission line, and not less than thirty days prior to the filing of such petition, the person, company, or corporation shall hold informational meetings in each county in which real property or rights therein will be affected. A member of the

board, the counsel of the board, or a hearing examiner designated by the board shall serve as the presiding officer at each meeting and, shall present an agenda for such meeting which shall include a summary of the legal rights of the affected landowners, and shall distribute and review the statement of individual rights required under section 6B.2A, subsection 1. No A formal record of the meeting shall not be required.

The notice shall set forth the name of the applicant; state the applicant's principal place of business; state the general description and purpose of the proposed project; state the general nature of the right-of-way right-of-way desired; state the possibility that the right-of-way may be acquired by condemnation if approved by the utilities board; provide a map showing the route of the proposed project; provide a description of the process used by the utilities board in making a decision on whether to approve a franchise or grant the right to take property by eminent domain; advise that the landowner has the right to be present at such meetings and to file objections with the utilities board; designate the place and time of the meeting; be served not less than thirty days prior to the time set for the meeting by certified mail with return receipt requested; and be published once in a newspaper of general circulation in the county at least one week and not more than three weeks before the time of the meeting and such publication shall be considered notice to landowners whose residence is not known.

Sec. 23. Section 478.6, unnumbered paragraph 2, Code 1999, is amended to read as follows:

Where a petition seeks the use of the right of eminent domain over specific parcels of real property, the board shall prescribe the notice to be served upon the owners of record and parties in possession of said the property over which the use of the right of eminent domain is sought. The notice shall include the statement of individual rights required pursuant to section 6B.2A, subsection 1.

Sec. 24. Section 479.5, unnumbered paragraphs 3 and 6, Code 1999, are amended to read as follows:

A pipeline company shall hold informational meetings in each county in which real property or property rights will be affected at least thirty days prior to filing the petition for a new pipeline. A member of the board or a person designated by the board shall serve as the presiding officer at each meeting and, shall present an agenda for the meeting which shall include a summary of the legal rights of the affected landowners, and shall distribute and review the statement of individual rights required under section 6B.2A. No A formal record of the meeting shall not be required.

The notice shall set forth the name of the applicant; the applicant's principal place of business; the general description and purpose of the proposed project; the general nature of the right-of-way desired; the possibility that the right-of-way may be acquired by condemnation if approved by the utilities board; a map showing the route of the proposed project; a description of the process used by the utilities board in making a decision on whether to approve a permit including the right to take property by eminent domain; that the landowner has a right to be present at such meeting and to file objections with the board; and a designation of the time and place of the meeting; ~~and.~~ The notice shall be served by certified mail with return receipt requested not less than thirty days previous to the time set for the meeting; and shall be published once in a newspaper of general circulation in the county. The publication shall be considered notice to landowners whose residence is not known and to each person in possession of or residing on the property provided a good faith effort to notify can be demonstrated by the pipeline company.

Sec. 25. Section 479.7, Code 1999, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. Where a petition seeks the use of the right of eminent domain over specific parcels of real

property, the board shall prescribe the notice to be served upon the owners of record and parties in possession of the property over which the use of the right of eminent domain is sought. The notice shall include the statement of individual rights required pursuant to section 6B.2A.

Sec. 26. Section 479.46, subsection 3, unnumbered paragraph 2, Code 1999, is amended to read as follows:

~~Sections 6B:10 to 6B:13 apply to this notice.~~ If more than one landowner petitions the county board of supervisors, the application to the chief judge, notice to the pipeline company, and appraisalment of damages shall be consolidated into one application, notice, and appraisalment. The county attorney may assist in coordinating the consolidated application and notice, but does not become an attorney for the landowners by doing so.

Sec. 27. Section 479A.25, subsection 3, unnumbered paragraph 2, Code 1999, is amended to read as follows:

~~Sections 6B:10 to 6B:13 apply to this notice.~~ If more than one landowner petitions the county board of supervisors, the application to the chief judge, notice to the pipeline company, and appraisalment of damages shall be consolidated into one application, notice, and appraisalment. The county attorney may assist in coordinating the consolidated application and notice, but does not become an attorney for the landowners by doing so.

Sec. 28. Section 479B.30, subsection 3, unnumbered paragraph 2, Code 1999, is amended to read as follows:

~~Sections 6B:10 to 6B:13 apply to this notice.~~ If more than one landowner petitions the county board of supervisors, the application to the chief judge, notice to the pipeline company, and appraisalment of damages shall be consolidated into one application, notice, and appraisalment. The county attorney may assist in coordinating the consolidated application and notice, but does not become an attorney for the landowners by doing so.

Sec. 29. Section 6B.12, Code Supplement 1999, and section 6B.13, Code 1999, are repealed.

Sec. 30. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

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BRENT SIEGRIST  
Speaker of the House

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MARY E. KRAMER  
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2528, Seventy-eighth General Assembly.

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ELIZABETH ISAACSON  
Chief Clerk of the House

Approved 5/10, 2000

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THOMAS J. VILSACK  
Governor