

Senate Study Bill 1170

Bill Text

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1 1 Section 1. NEW SECTION. 6A.21 CONDEMNATION OF
1 2 AGRICULTURAL LAND DEFINITIONS.
1 3 1. Except as otherwise provided, for purposes of this
1 4 chapter and chapter 6B:
1 5 a. "Agricultural land" means real property that is used
1 6 for the production of agricultural commodities and from which
1 7 one thousand dollars or more of agricultural commodities were
1 8 sold or normally would be sold during the year. Such use of
1 9 property includes, but is not limited to, the raising,
1 10 harvesting, handling, drying, or storage of crops used for
1 11 feed, food, seed, or fiber; the care or feeding of livestock;
1 12 the handling or transportation of crops or livestock; the
1 13 storage, treatment, or disposal of livestock manure; and the
1 14 application of fertilizers, soil conditioners, pesticides, and
1 15 herbicides on crops. Agricultural land includes land on which
1 16 is located farm residences or outbuildings used for
1 17 agricultural purposes and land on which is located facilities,
1 18 structures, or equipment for agricultural purposes.
1 19 Agricultural land includes land taken out of agricultural
1 20 production for purposes of environmental protection or
1 21 preservation.
1 22 b. "Private development purposes" means the construction
1 23 of, or improvement related to, recreational trails,
1 24 recreational development paid for primarily with private
1 25 funds, housing and residential development, or commercial or
1 26 industrial enterprise development.
1 27 c. "Public use" or "public purpose" or "public
1 28 improvement" does not include the authority to condemn
1 29 agricultural land for private development purposes unless the
1 30 owner of the agricultural land consents to the condemnation.
1 31 2. The limitation on the definition of public use, public
1 32 purpose, or public improvement does not apply to a slum area
1 33 or blighted area as defined in section 403.17, or to an
1 34 industrial enterprise if the economic development board has
1 35 approved the use of eminent domain under section 15.104,
2 1 subsection 9, or to the establishment, relocation, or
2 2 improvement of a road pursuant to chapter 306, or to an
2 3 airport as defined in section 328.1, or to land acquired in
2 4 order to replace or mitigate land used in a road project when
2 5 federal law requires replacement or mitigation. This
2 6 limitation also does not apply to utilities or persons under
2 7 the jurisdiction of the Iowa utilities board in the department
2 8 of commerce or to any other utility conferred the right by
2 9 statute to condemn private property or to otherwise exercise
2 10 the power of eminent domain.
2 11 Sec. 2. NEW SECTION. 6B.2A NOTICE OF PROPOSED PUBLIC
2 12 IMPROVEMENT.
2 13 1. An acquiring agency shall provide written notification
2 14 to each owner of record of private property that may be the
2 15 subject of condemnation. The authority under this chapter is
2 16 not conferred and condemnation proceedings shall not begin
2 17 unless a good faith effort is made to serve the notice as
2 18 provided in this section on the owner of record of the
2 19 property subject to condemnation. The notice shall be mailed
2 20 by ordinary mail to the owner of record's last known address
2 21 no less than thirty days before adoption of the ordinance,

2 22 resolution, motion, or other declaration of intent to proceed
2 23 with the public improvement and the acquisition or
2 24 condemnation, if necessary, of the property. If the location
2 25 of the public improvement is changed or expanded after the
2 26 decision has been made to proceed with the public improvement,
2 27 a notice shall be mailed by ordinary mail no less than thirty
2 28 days before the adoption of the ordinance, resolution, motion,
2 29 or other declaration of intent to proceed with a change in the
2 30 location of the public improvement to the owner of record of
2 31 the land to be acquired or condemned, if necessary, in the new
2 32 location of the public improvement affected by the change.
2 33 The notice shall include the statement of individual rights
2 34 required under section 6B.2B. The notice shall, at a minimum,
2 35 include the following information:

- 3 1 a. The general nature of the public improvement.
- 3 2 b. The acquiring agency's intended use of the private
3 3 property for the public improvement.
- 3 4 c. The process to be followed by the acquiring agency in
3 5 making the decision to proceed with the public improvement and
3 6 the acquisition or condemnation, if necessary, of the
3 7 property.
- 3 8 d. The time, place, and manner at which an opportunity is
3 9 provided for public input into the decision to proceed with
3 10 the public improvement and the acquisition or condemnation, if
3 11 necessary, of the property.
- 3 12 e. The current status in the planning process for the
3 13 public improvement, including meetings held and decisions
3 14 made.

3 15 2. The authority to condemn is not conferred until the
3 16 appropriate authority approves the public improvement,
3 17 including the approval of any permits required by state or
3 18 federal law which permits are necessary for commencement of
3 19 the project. This subsection does not apply to land condemned
3 20 for public improvements undertaken pursuant to section 306.19.

3 21 3. If, after making a good faith effort, an acquiring
3 22 agency is unable to ascertain the owner of record's last known
3 23 address, or the identity of the owner of record is uncertain,
3 24 or the mail is returned as undeliverable or is refused, the
3 25 acquiring agency shall cause a notice to be published once in
3 26 a newspaper of general circulation in the county or city where
3 27 the private property is located.

3 28 Sec. 3. NEW SECTION. 6B.2B ACQUISITION NEGOTIATION
3 29 STATEMENT OF RIGHTS.

3 30 1. The acquiring agency shall make a good faith effort to
3 31 negotiate with the owner to purchase the private property
3 32 before filing an application for condemnation or otherwise
3 33 proceed with the condemnation process.

3 34 2. The acquiring agency shall provide the owner of record
3 35 of the private property with a statement of their individual
4 1 rights to be included with the notice required under section
4 2 6B.2A. The attorney general shall adopt rules pursuant to
4 3 chapter 17A prescribing a statement of rights which may be
4 4 used in substantial form by any person required to provide the
4 5 statement by this section.

4 6 Sec. 4. Section 6B.3, Code 1999, is amended to read as
4 7 follows:

4 8 6B.3 APPLICATION RECORDING NOTICE TIME FOR
4 9 APPRAISEMENT NEW PROCEEDINGS.

4 10 1.

~~Such~~

- The proceedings shall be instituted by a written
4 11 application filed with the chief judge of the judicial
4 12 district of the county in which the land sought to be
4 13 condemned is located.

~~Said~~

- The application shall set forth:

4 14

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- a. A description of all the property in the county,
4 15 affected or sought to be condemned, by its congressional
4 16 numbers, in tracts not exceeding one-sixteenth of a section,
4 17 or, if the land consists of lots, by the numbers of the lot
4 18 and block, and plat designation.

4 19

2

- b. A plat showing the location of the right-of-way or
4 20 other property sought to be condemned with reference to such
4 21 description.

4 22

3

- c. The names of all record owners of the different
4 23 tracts of land sought to be condemned, or otherwise affected
4 24 by such proceedings, and of all record holders of liens and
4 25 encumbrances on such lands; also the place of residence of all
4 26 such persons so far as known to the applicant.

4 27

4

- d. The purpose for which condemnation is sought.

4 28

5

- e. A request for the appointment of a commission to
4 29 appraise the damages.

4 30

6

- f. If the damages are to be paid by the state and the
4 31 land to be condemned is within an agricultural area as
4 32 provided in chapter 352, a statement disclosing whether any of
4 33 that land is classified as class I or class II land under the
4 34 United States department of agriculture natural resources
4 35 conservation service land capability classification system
5 1 contained in the agriculture handbook number 210, 1961 edition
5 2 and, if so classified, stating that the class I or class II
5 3 land is reasonably necessary for the work of internal
5 4 improvement for which condemnation is sought.

5 5 g. A showing of the minimum amount of land necessary to
5 6 achieve the public purpose and the amount of land to be
5 7 acquired by condemnation for the public improvement. Any land
5 8 to be acquired by condemnation beyond the necessary minimum to
5 9 complete the project shall be presumed not to be necessary for
5 10 a public use or public purpose unless the applicant can show
5 11 that a substantial need exists for the additional property to
5 12 achieve the public use or public purpose, or that the land in
5 13 question is of little or no value or utility to the owner, or
5 14 that the owner consents to the condemnation.

5 15 h. A statement indicating the efforts made by the
5 16 applicant to negotiate in good faith with the owner to acquire
5 17 the private property sought to be condemned.

5 18 2. The applicant shall mail a copy of the application by
5 19 certified mail to the owner at the owner's last known address
5 20 and to any mortgagee of record at the mortgagee's last known
5 21 address and to any other record lienholder or encumbrancer of
5 22 the land at the lienholder's or encumbrancer's last known
5 23 address. If service of notice by certified mail cannot be
5 24 made in the manner prescribed in this section, the applicant
5 25 shall cause a notice to be published once in a newspaper of
5 26 general circulation in the county. If service of notice is

5 27 made by publication, an affidavit shall be filed with the
5 28 county recorder along with the application. The affidavit
5 29 shall state the reason why service of notice by certified mail
5 30 could not be made, the name of the publication, and the date
5 31 of the publication. Service of notice by publication shall be
5 32 deemed complete on the day of publication.
5 33

~~7~~

- 3. The applicant shall promptly certify that its
5 34 application for condemnation has been approved by the chief
5 35 judge and shall file the original approved application with
6 1 the county recorder in the manner required under section
6 2 6B.37. The county recorder shall file and index the
6 3 application in the record of deeds and preserve the
6 4 application as required by sections 6B.38 and 558.55. The
6 5 filing and indexing constitute constructive notice to all
6 6 parties that a proceeding to condemn the property is pending
6 7 and that the applicant has the right to acquire the property
6 8 from all owners, lienholders, and encumbrancers whose
6 9 interests are of record at the time of the filing. When
6 10 indexed, the proceeding is considered pending so as to charge
6 11 all persons not having an interest in the property with notice
6 12 of its pendency, and while pending no interest can be acquired
6 13 by the third parties in the property against the rights of the
6 14 applicant. If the appraisal of damages is not made within
6 15 one hundred twenty days, the proceedings instituted under this
6 16 section are terminated and all rights and interests of the
6 17 applicant arising out of the application for condemnation
6 18 terminate. The applicant may reinstitute a new condemnation
6 19 proceeding at any time. The reinstated proceedings are
6 20 entirely new proceedings and not a revival of the terminated
6 21 proceeding.
6 22 Sec. 5. Section [6B.4](#), unnumbered paragraph 2, Code 1999,
6 23 is amended to read as follows:
6 24 The chief judge of the judicial district shall select by
6 25 lot six persons from the list, two persons who are owner-
6 26 operators of agricultural property when the property to be
6 27 condemned is agricultural property; two persons who are owners
6 28 of city property when the property to be condemned is other
6 29 than agricultural property; and two persons from each of the
6 30 remaining two representative groups, who shall constitute a
6 31 compensation commission to assess the damages to all property
6 32 to be taken by the applicant and located in the county, and
6 33 shall name a chairperson from the persons selected.

~~No~~

- A

6 34 person shall not be selected as a member of the compensation
6 35 commission

~~selected shall possess~~

- if the person possesses any
7 1 interest in the proceeding which would cause

~~such~~

- the person

7 2 to render a biased decision. The clerk of the district court
7 3 shall send, by regular mail, a list of those persons selected
7 4 to the applicant and to the owner of the property at the
7 5 owner's last known address. The list shall be provided prior
7 6 to the mailing, by any party, of a notice of assessment under
7 7 section 6B.8. If the clerk of the district court is unable to
7 8 locate an address for the owner of the property, the list
7 9 shall be published once in a newspaper of general circulation
7 10 in the county. The applicant shall reimburse the clerk of the
7 11 district court for the cost of mailing and publication.

7 12 Sec. 6. Section 6B.7, Code 1999, is amended to read as
7 13 follows:
7 14 6B.7 COMMISSIONERS TO QUALIFY.
7 15 Before proceeding with the assessment all commissioners
7 16 shall qualify by filing with the sheriff a written oath that
7 17 they will to the best of their ability faithfully and
7 18 impartially assess

~~—said~~

~~— damages and make a written report to~~
7 19 the sheriff. The applicant or the owner may challenge one
7 20 commissioner without stating cause. A challenge to the
7 21 appointment of a commissioner must be made to the chief judge
7 22 of the judicial district no less than seventy-two hours before
7 23 the condemnation jury is set to meet. A commissioner shall be
7 24 appointed to fill a vacancy resulting from a challenge no less
7 25 than twenty-four hours before the jury is set to meet.

7 26 Sec. 7. Section 6B.8, Code 1999, is amended to read as
7 27 follows:

7 28 6B.8 NOTICE OF ASSESSMENT.

7 29 The applicant, or the owner or any lienholder or
7 30 encumbrancer of any land described in the application, may, at
7 31 any time after the appointment of the commissioners, have the
7 32 damages to the lands of any such owner assessed by giving the
7 33 other party, if a resident of this state,

~~—ten~~

~~— thirty days'~~
7 34 notice, in writing.

~~—Such~~

~~— The notice shall specify the day and~~
7 35 the hour when the commissioners will view the premises, and
8 1 shall be personally served in the same manner as original
8 2 notices.
8 3 Service of the notice to a person not a resident of this
8 4 state shall be by certified mail to the person's last known
8 5 address. At the same time, the applicant shall cause a notice
8 6 to be published once in a newspaper of general circulation in
8 7 the county prior to the day fixed for the appraisal, which
8 8 day shall be at least thirty days after publication. Service
8 9 of notice in this manner shall be deemed complete on the day
8 10 of publication.

8 11 Sec. 8. Section 6B.12, Code 1999, is amended to read as
8 12 follows:

8 13 6B.12 NOTICE

~~—TO NONRESIDENTS~~

~~— WHEN RESIDENCE UNKNOWN.~~

8 14

~~—If the owner of such lands or any person interested therein~~

~~—~~
8 15

~~— is a nonresident of this state, or if~~

~~— If the person's~~
8 16 residence is unknown after a good faith effort is made to find
8 17 the person's last known address,

~~— no demand for the land for~~

~~—~~
8 18

~~— the purposes sought shall be necessary, but~~

~~— the notice~~

8 19

~~afore~~
~~said~~

- ~~required in section 6B.8~~ shall be published in

~~some~~

8 20 a newspaper of general circulation in the county

~~and of~~

8 21

~~general circulation therein~~

- , once each week for at least four

8 22 successive weeks prior to the day fixed for the appraisalment,

8 23 which day shall be at least thirty days after the first

8 24 publication of the notice.

8 25 Sec. 9. Section 6B.14, unnumbered paragraph 3, Code 1999,

8 26 is amended to read as follows:

8 27

~~In addition to all other damages provided by law, except~~

8 28

~~moving expenses paid or required to be paid under relocation~~

8 29

~~assistance programs, an~~

- An owner or tenant occupying land

8 30 which is proposed to be acquired by condemnation shall be

8 31 awarded a sum sufficient to remove such owner's or tenant's

8 32 personal property from the land to be acquired, which sum

8 33 shall represent reasonable costs of moving

~~said~~

- the personal

8 34 property from the

~~said~~

- land to be acquired to a point no

8 35 greater than

~~twenty five~~

- fifty miles

~~therefrom~~

-; but in any

9 1 event,

~~said~~

- damages awarded under this section for moving

9 2 shall not exceed five

~~hundred~~

- thousand dollars for each owner

9 3 or tenant occupying land

~~so~~

- proposed to be condemned. An

9 4 owner or tenant may apply for an award pursuant to this

9 5 section only if all other damages provided by law have been

9 6 awarded and such amount awarded is insufficient to pay the

9 7 owner's reasonable costs of moving.

9 8 Sec. 10. Section 6B.26, Code 1999, is amended to read as

9 9 follows:

9 10 6B.26 DISPOSSESSION OF OWNER.
9 11 A landowner shall not be dispossessed, under condemnation
9 12 proceedings, of the landowner's residence, dwelling house,
9 13

~~outhouse~~

~~outbuildings if the residence or dwelling house is~~

9 14 also acquired, orchard, or garden, until the damages thereto
9 15 have been finally determined and paid. However, if the
9 16 property described in this section is condemned for highway
9 17 purposes by the state department of transportation, the
9 18 condemning authority may take possession of the property
9 19 either after the damages have been finally determined and paid
9 20 or one hundred eighty days after the compensation commission
9 21 has determined and filed its award, in which event all of the
9 22 appraisal of damages shall be paid to the property owner
9 23 before the dispossession can take place. This section shall
9 24 not apply to condemnation proceedings for drainage or levee
9 25 improvements, or for public school purposes. For the purposes
9 26 of this section, "outbuildings" means structures and
9 27 improvements located in proximity to the landowner's
9 28 residence.

9 29 Sec. 11. Section 6B.33, Code 1999, is amended to read as
9 30 follows:

9 31 6B.33 COSTS AND ATTORNEY FEES.

9 32 The applicant shall pay all costs of the assessment made by
9 33 the commissioners and reasonable attorney fees and costs
9 34 incurred by the condemnee as determined by the commissioners
9 35 if the award of the commissioners exceeds one hundred ten
10 1 percent of the final offer of the applicant prior to
10 2 condemnation. The applicant shall file with the sheriff an
10 3 affidavit setting forth the most recent offer made to the
10 4 person whose property is sought to be condemned. Members of
10 5 such commissions shall receive a per diem of fifty dollars and
10 6 actual and necessary expenses incurred in the performance of
10 7 their official duties. The applicant shall reimburse the
10 8 county sheriff for the per diem and expense amounts paid by
10 9 the sheriff to the members. The applicant shall reimburse the
10 10 owner for the expenses the owner incurred for recording fees,
10 11 penalty costs for full or partial prepayment of any
10 12 preexisting recorded mortgage entered into in good faith
10 13 encumbering the property, and for similar expenses incidental
10 14 to conveying the property to the applicant. The applicant
10 15 shall also pay all costs occasioned by the appeal, including
10 16 reasonable attorney fees to be taxed by the court, unless on
10 17 the trial thereof the same or a less amount of damages is
10 18 awarded than was allowed by the tribunal from which the appeal
10 19 was taken.

10 20 Sec. 12. Section 6B.42, Code 1999, is amended to read as
10 21 follows:

10 22 6B.42 EMINENT DOMAIN PAYMENT TO DISPLACED PERSONS.

10 23 1. a. The acquiring agency shall provide to the person,
10 24 in addition to any other sums of money in payment of just
10 25 compensation, the payments and assistance required by law, in
10 26 accordance with chapter 316.

10 27 b. A person aggrieved by a determination made as to
10 28 eligibility for relocation assistance, a payment, or the
10 29 amount of the payment, upon application, may have the matter
10 30 reviewed by the appropriate acquiring agency.

10 31 c. An acquiring agency subject to this section that
10 32 proposes to displace a person shall inform the person of the
10 33 person's right to receive relocation assistance and payments,
10 34 and of an aggrieved person's right to appeal a determination
10 35 as to assistance and payments.

11 1

~~2.~~ a. A utility or railroad subject to section 327C.2,
11 2 or chapters 476, 478, 479,

~~and~~

~~479A, and 479B,~~ authorized by
11 3 law to acquire property by condemnation, which acquires the
11 4 property of a person or displaces a person for a program or
11 5 project which has received or will receive federal financial
11 6 assistance as defined in section 316.1, shall provide to the
11 7 person, in addition to any other sums of money in payment of
11 8 just compensation, the payments and assistance required by
11 9 law, in accordance with chapter 316.
11 10

~~2.~~

b. A person aggrieved by a determination made by a
11 11 utility as to eligibility for relocation assistance, a
11 12 payment, or the amount of the payment, upon application, may
11 13 have the matter reviewed by the utilities division of the
11 14 department of commerce.
11 15

~~3.~~

c. A person aggrieved by a determination made by a
11 16 railroad as to eligibility for relocation assistance, a
11 17 payment, or the amount of the payment, upon application, may
11 18 have the matter reviewed by the state department of
11 19 transportation.
11 20

~~4.~~

d. A utility or railroad subject to this section that
11 21 proposes to displace a person shall inform the person of the
11 22 person's right to receive relocation assistance and payments,
11 23 and of an aggrieved person's right to appeal to the utilities
11 24 division of the department of commerce or the state department
11 25 of transportation.
11 26 Sec. 13. Section [6B.45](#), Code 1999, is amended to read as
11 27 follows:
11 28 6B.45

~~CONDEMNATION FOR ROAD OR STREET~~

~~MAILING COPY OF~~

~~11 29 APPRAISAL.~~

~~11 30 When any real property or interest~~

~~therein~~

~~in real property~~

~~11 31 is to be purchased, or in lieu thereof to be condemned~~

~~for~~

~~11 32~~

~~highway, street or road purposes~~

~~, the~~

~~purchasing state~~

~~11 33 acquiring agency~~

~~, county or city~~

~~or~~

~~their~~

~~its agent shall~~

~~11 34 submit to the person, corporation, or entity whose property or~~

11 35 interest

~~therein~~

- in the property is to be taken, by ordinary
12 1 mail, at least ten days prior to the date of contact, a copy
12 2 of the appraisal in its entirety upon such real property or
12 3 interest

~~therein~~

- in such real property prepared for the
12 4 acquiring agency or its agent, which shall include, at

~~least~~

- a
12 5 minimum, an itemization of the appraised value of the real
12 6 property or interest

~~therein~~

- in the property, any buildings
12 7

~~thereon~~

- on the property, all other improvements including
12 8 fences, severance damages, and loss of access. The appraisal
12 9 sent to the condemnee shall be that appraisal upon which the
12 10 condemnor will rely to establish an amount which the condemnor
12 11 believes to be just compensation for the real property. All
12 12 other appraisals made on the property as a result of the
12 13 condemnation proceeding shall be made available to the
12 14 condemnee upon request. In lieu of an appraisal, a utility or
12 15 person under the jurisdiction of the utilities board of the
12 16 department of commerce, or any other utility conferred the
12 17 right by statute to condemn private property, shall provide in
12 18 writing by certified mail to the owner of record thirty days
12 19 prior to negotiations, the methods and factors used in
12 20 arriving at an offered price for voluntary easements including
12 21 the range of cash amount of each component.

12 22 Sec. 14. Section 6B.54, unnumbered paragraph 1, Code 1999,
12 23 is amended to read as follows:
12 24

~~If a~~

- For any project or displacing activity that has
12 25 received or will receive federal financial assistance as
12 26 defined in section 316.1, for any state-funded projects, or
12 27 for any other public improvement for which condemnation is
12 28 sought, an acquiring agency shall

~~be guided by~~

~~, at a minimum,~~

12 29 satisfy the following policies:

12 30 Sec. 15. Section 6B.54, subsections 2, 3, 8, and 9, Code
12 31 1999, are amended to read as follows:

12 32 2. Real property shall be appraised as required by section
12 33 6B.45 before the initiation of negotiations, and the owner or
12 34 the owner's designated representative shall be given an
12 35 opportunity to accompany at least one appraiser of the
13 1 acquiring agency during an inspection of the property, except
13 2 that

~~the state department of transportation~~

~~an acquiring~~

13 3 agency may prescribe a procedure to waive the appraisal in
13 4 cases involving the acquisition of property with a low fair
13 5 market value. In lieu of an appraisal, a utility or person
13 6 under the jurisdiction of the utilities board of the
13 7 department of commerce, or any other utility conferred the

13 8 right by statute to condemn private property, shall provide in
13 9 writing by certified mail to the owner of record thirty days
13 10 before negotiations, the methods and factors used in arriving
13 11 at an offered price for voluntary easements including the
13 12 range of cash amount of each component.

13 13 3. Before the initiation of negotiations for real
13 14 property, the acquiring agency shall establish an amount which
13 15 it believes to be just compensation for the real property, and
13 16 shall make a prompt offer to acquire the property for the full
13 17 amount established by the agency. In no event shall the
13 18 amount be less than the

~~agency's approved~~

- lowest appraisal of

13 19 the fair market value of the property. In the case of a
13 20 utility or person under the jurisdiction of the utilities
13 21 board of the department of commerce, or any other utility
13 22 conferred the right by statute to condemn private property,
13 23 the amount shall not be less than the amount indicated by the
13 24 methods and factors used in arriving at an offered price for a
13 25 voluntary easement.

13 26 8. If the acquisition of only a portion of property would
13 27 leave the owner with an uneconomical remnant, the

~~head of the~~

-

13 28 acquiring agency

~~concerned~~

- shall offer to acquire that

13 29 remnant. For the purposes of this chapter, an "uneconomical
13 30 remnant" is a parcel of real property in which the owner is
13 31 left with an interest after the partial acquisition of the
13 32 owner's property, where the

~~head of the~~

- acquiring agency

13 33

~~concerned~~

- determines that the parcel has little or no value or
13 34 utility to the owner.

13 35 9. A person whose real property is being acquired in
14 1 accordance with this chapter, after the person has been fully
14 2 informed of the person's right to receive just compensation
14 3 for the property, may donate the property, any part of the
14 4 property, any interest in the property, or any compensation
14 5 paid for it

~~to any agency~~

- as the person may determine.

14 6 Sec. 16. Section [6B.55](#), unnumbered paragraph 1, Code 1999,
14 7 is amended to read as follows:
14 8

~~If a~~

- For any program or project that has received or will

14 9 receive federal financial assistance as defined in section
14 10 316.1, for any state-funded projects, or for any other public
14 11 improvement for which condemnation is sought, an acquiring
14 12 agency shall

~~be guided by~~

- at a minimum satisfy the following

14 13 policies:

14 14 Sec. 17. NEW SECTION. 6B.57 PROCEDURAL COMPLIANCE.

14 15 If a city makes a good faith effort to serve, send, or

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

14 25 Sec. 18. NEW SECTION. 6B.58 ACQUIRING AGENCY
14 26 DEFINITION.

14 27 For purposes of this chapter, an "acquiring agency" means
14 28 the state of Iowa or any person or entity conferred the right
14 29 by statute to condemn private property or to otherwise
14 30 exercise the power of eminent domain.

14 31 Sec. 19. Section 15.104, Code 1999, is amended by adding
14 32 the following new subsection:

14 33 NEW SUBSECTION. 9. Review all applications submitted by
14 34 cities requesting approval for the city to exercise eminent
14 35 domain authority over agricultural land and determine whether
15 1 the use of such authority is necessary for the placement of an
15 2 industrial enterprise in the community. The application may
15 3 only include land located for at least three years within the
15 4 incorporated boundaries of the city.

15 5 Approval of an application by a city to exercise the right
15 6 of eminent domain to acquire agricultural land for an
15 7 industrial enterprise may be granted for a specific land area
15 8 upon a finding of public necessity. When making a
15 9 determination of public necessity, the board shall consider
15 10 all of the following:

15 11 a. The feasibility of acquiring the agricultural land by
15 12 methods other than condemnation.

15 13 b. The public cost and public benefit from locating the
15 14 industrial enterprise on the agricultural land.

15 15 c. The existence of willing sellers at other feasible
15 16 locations in the state.

15 17 d. The ability to adapt the industrial development plans
15 18 to avoid the use of condemnation.

15 19 e. The existence of a specific industrial enterprise to be
15 20 located on the agricultural land.

15 21 f. The amount of land requested to be condemned compared
15 22 to the total amount of land needed for the project.

15 23 If a city acquires property by condemnation, or by
15 24 otherwise exercising the power of eminent domain, and that
15 25 property is later sold by the city for more than the
15 26 acquisition price paid to the landowner, the city shall pay to
15 27 the landowner the difference between the price at which it was
15 28 acquired and the price at which it was sold by the city less
15 29 the cost of any improvements made to the land by the city.

15 30 Sec. 19. Section 306.19, subsection 3, Code 1999, is
15 31 amended to read as follows:

15 32 3. None of the foregoing requirements shall prohibit the
15 33 property owner and the agency from entering into a mutually
15 34 acceptable agreement for the replacement, relocation,
15 35 construction, or maintenance of any alternate driveway on the
16 1 owner's property. Compensation for any property rights taken
16 2 in the establishment of any alternative temporary or permanent
16 3 access shall be paid as in any other purchase or condemnation
16 4 of property.

16 5 Sec. 20. Section 306.19, subsection 4, Code 1999, is
16 6 amended to read as follows:

16 7 4.

~~Compensation for any property rights taken in the~~

~~establishment of any alternative temporary or permanent access~~

16 9

~~shall be paid as in any other purchase or condemnation of~~

16 10

~~property.~~

Proceedings for the condemnation of land for any

16 11 highway shall be under the provisions of chapter 6A and

16 12 chapter 6B. Provided that, in the condemnation of right-of-

16 13 way for secondary roads that is contiguous to existing road

16 14 right-of-way for the maintenance, safety improvement, or

16 15 upgrade of the existing secondary road, the board of

16 16 supervisors may proceed as provided in sections 306.28 to

16 17 306.37.

16 18 Sec. 21. Section 306.27, Code 1999, is amended to read as
16 19 follows:

16 20 306.27 CHANGES FOR SAFETY, ECONOMY, AND UTILITY.

16 21 The state department of transportation as to primary roads

16 22 and the boards of supervisors as to secondary roads on their

16 23 own motion may change the course of any part of any road or

16 24 stream, watercourse, or dry run and may pond water in order to

16 25 avoid the construction and maintenance of bridges, or to avoid

16 26 grades, or railroad crossings, or to straighten a road, or to

16 27 cut off dangerous corners, turns or intersections on the

16 28 highway, or to widen a road above statutory width, or for the

16 29 purpose of preventing the encroachment of a stream,

16 30 watercourse, or dry run upon the highway. The department and

16 31 the board of supervisors shall conduct

~~its~~

~~their~~ proceedings

16 32 in the manner and form prescribed in chapter 6B,

~~and~~

~~except~~

16 33 that the board of supervisors

~~shall~~

~~may~~ use the form

16 34 prescribed in sections 306.28 to 306.37

~~or as provided in~~

16 35

~~chapter 6B~~

~~for the condemnation of right-of-way that is~~

17 1 contiguous to existing road right-of-way and necessary for the

17 2 maintenance, safety improvement, or upgrade of the existing

17 3 secondary road. Changes are subject to chapter 455B.

17 4 Sec. 22. Section 306.28, Code 1999, is amended by striking

17 5 the section and inserting in lieu thereof the following:

17 6 306.28 APPRAISERS.

17 7 If the board is unable, by agreement with the owner, to

17 8 acquire the necessary right of way to effect such change, a

17 9 compensation commission shall be selected pursuant to section

17 10 6B.4, to appraise the damages consequent on the taking of the

17 11 right of way.

17 12 Sec. 23. Section 306.29, unnumbered paragraph 2, Code

17 13 1999, is amended to read as follows:

17 14 To whom it may concern: Notice is given that the board of

17 15 supervisors of county, Iowa, propose to condemn for

17 16 road purposes the following described real estate in said

17 17 county: (Here describe the right of way, and the tract or

17 18 tracts from which such right of way will be taken.) The
17 19 damages caused by said condemnation will be assessed by

~~three~~

17 20

~~appraisers~~

~~a compensation commission appointed as provided by
17 21 law for the purpose of appraising the damages.~~

~~Notice is~~

17 22

~~hereby given that the owner or owners of said real estate may,~~

17 23

~~on or before the .. day of, appoint one of said~~

17 24

~~appraisers and that in case such right be not exercised, or if~~

17 25

~~exercised and the said appointee fails to appear and qualify,~~

17 26

~~the said three appraisers will be otherwise appointed as~~

17 27

~~provided by law.~~

- All parties interested are further notified
17 28 that

~~said three appraisers~~

- the compensation commission will,
17 29 when duly appointed, proceed to appraise

~~said~~

- the damages,
17 30 will report

~~said~~

- the appraisement to the

~~said~~

- board of
17 31 supervisors and that

~~said latter~~

- the board will pass thereon
17 32 as provided by law, and that at all such times and places you
17 33 may be present

~~if you be so minded~~

- You are further notified
17 34 that at

~~said~~

- the hearing before the

~~said~~

- supervisors you may
17 35 file objections to the use of

~~—said~~

- ~~the~~ land for road purposes
18 1 and that all such objections not so made will be deemed
18 2 waived.

18 3

18 4

.....
County Auditor.

18 5 Sec. 24. Section [306.31](#), Code 1999, is amended to read as
18 6 follows:

18 7 306.31

~~—QUALIFICATION AND~~

~~—ASSESSMENT.~~

18 8

~~—Upon the appointment of three appraisers, the county~~

18 9

~~—auditor shall cause them to appear before the auditor and to~~

18 10

~~—take oath that they will faithfully and impartially assess the~~

18 11

~~—damages claimed. Said~~

- ~~The~~ appraisers shall forthwith proceed
18 12 to the assessment of

~~—said~~

- damages and shall make written
18 13 report

~~—thereof~~

- of the damages to the board of supervisors.

18 14 Sec. 25. Section [316.1](#), subsection 5, paragraphs a and b,

18 15 Code 1999, are amended to read as follows:

18 16 a. A person who moves from real property or moves the
18 17 person's personal property from real property in

~~—either~~

- any of

18 18 the following circumstances:

18 19 (1) As a direct result of a written notice of intent to
18 20 acquire, the initiation of negotiations for, or the
18 21 acquisition of, the real property in whole or in part for a
18 22 program or project undertaken with federal financial
18 23 assistance.

18 24 (2) The person moved or moved the person's personal
18 25 property from real property on which the person is either a
18 26 residential tenant or conducts a small business, a farm
18 27 operation, or a business as defined in subsection 2, paragraph
18 28 "d", as a direct result of rehabilitation or demolition for a
18 29 program or project undertaken with federal financial
18 30 assistance in a case in which the head of the displacing
18 31 agency determines that the displacement is permanent.

18 32 (3) As a direct result of a written notice of intent to
18 33 acquire by condemnation, the initiation of negotiations for,
18 34 or the acquisition of, the real property in whole or in part
18 35 by the state of Iowa or by an entity or person conferred the
19 1 right to condemn private property.

19 2 b. For purposes of section 316.4, subsections 1 and 2, and
19 3 section 316.7, a person who moves from real property, or moves

19 4 the person's personal property from real property in

~~either~~

19 5 any of the following circumstances:

19 6 (1) As a direct result of a written notice of intent to
19 7 acquire, the initiation of negotiations for, or the
19 8 acquisition of, other real property in whole or in part if the
19 9 person conducts a business or farm operation on the other real
19 10 property for a program or project undertaken with federal
19 11 financial assistance.

19 12 (2) As a direct result of rehabilitation or demolition of
19 13 other real property on which the person conducts a business or
19 14 a farm operation for a program or project undertaken with
19 15 federal financial assistance in a case in which the head of
19 16 the displacing agency determines that the displacement is
19 17 permanent.

19 18 (3) As a direct result of a written notice of intent to
19 19 acquire by condemnation, the initiation of negotiations for,
19 20 or the acquisition of, other real property in whole or in part
19 21 by the state of Iowa or by an entity or person conferred the
19 22 right to condemn private property if the person conducts a
19 23 business or farm operation on the other real property.

19 24 Sec. 26. Section 331.304, subsection 8, Code 1999, is
19 25 amended to read as follows:

19 26 8. The power to take private property for public use shall
19 27 only be exercised by counties for public purposes which are
19 28 reasonable and necessary as an incident to the powers and
19 29 duties conferred upon counties, and in accordance with
19 30 chapters 6A and 6B.

~~Sections~~

~~Section 306.19~~

~~and 306.28 to~~

19 31

~~306.37 are~~

~~is~~ also applicable to condemnation of right of way

19 32 for secondary roads. Sections 306.27 through 306.37 are
19 33 applicable to the condemnation of right of way that is
19 34 contiguous to existing road right of way and necessary for the
19 35 maintenance, safety improvement, or upgrade of the existing
20 1 secondary road.

20 2 Sec. 27. Section 403.5, subsection 4, Code 1999, is
20 3 amended by adding the following new unnumbered paragraph:
20 4 NEW UNNUMBERED PARAGRAPH. A municipality shall not condemn
20 5 agricultural land included within an economic development area
20 6 unless the owner of the agricultural land consents to
20 7 condemnation or unless the economic development board approves
20 8 the use of condemnation under section 15.104, subsection 9,
20 9 for the purposes of locating an industrial enterprise. This
20 10 paragraph shall not apply to land necessary or useful for the
20 11 operation of a city utility as defined in section 362.2, for
20 12 the operation of a city franchise conferred the authority to
20 13 condemn private property under section 364.2, or a combined
20 14 utility system as defined in section 384.80.

20 15 Sec. 28. Section 403.7, unnumbered paragraph 1, Code 1999,
20 16 is amended to read as follows:

20 17 A municipality shall have the right to acquire by
20 18 condemnation any interest in real property, including a fee
20 19 simple title thereto, which it may deem necessary for or in
20 20 connection with an urban renewal project under this chapter.
20 21 However, a municipality shall not condemn agricultural land
20 22 included within an economic development area unless the owner
20 23 of the agricultural land consents to condemnation or unless

20 24 the economic development board approves the use of
20 25 condemnation under section 15.104, subsection 9, for the
20 26 purposes of locating an industrial enterprise. A municipality
20 27 may exercise the power of eminent domain in the manner
20 28 provided in chapter 6B, and Acts amendatory to that chapter or
20 29 supplementary to that chapter, or it may exercise the power of
20 30 eminent domain in the manner now or which may be hereafter
20 31 provided by any other statutory provisions for the exercise of
20 32 the power of eminent domain. Property already devoted to a
20 33 public use may be acquired in like manner. However, real
20 34 property belonging to the state, or any political subdivision
20 35 of this state, shall not be acquired without its consent, and
21 1 real property or any right or interest in the property owned
21 2 by any public utility company, pipeline company, railway or
21 3 transportation company vested with the right of eminent domain
21 4 under the laws of this state, shall not be acquired without
21 5 the consent of the company, or without first securing, after
21 6 due notice to the company and after hearing, a certificate
21 7 authorizing condemnation of the property from the board,
21 8 commission or body having the authority to grant a certificate
21 9 authorizing condemnation. In a condemnation proceeding, if a
21 10 municipality proposes to take a part of a lot or parcel of
21 11 real property, the municipality shall also take the remaining
21 12 part of the lot or parcel if requested by the owner.

21 13 Sec. 29. Section [403.17](#), Code 1999, is amended by adding
21 14 the following new subsection:

21 15 **NEW SUBSECTION.** 2A. "Agricultural land" means real
21 16 property that is used for the production of agricultural
21 17 commodities and from which one thousand dollars or more of
21 18 agricultural commodities were sold or normally would be sold
21 19 during the year. Such use of property includes, but is not
21 20 limited to, the raising, harvesting, handling, drying, or
21 21 storage of crops used for feed, food, seed, or fiber; the care
21 22 or feeding of livestock; the handling or transportation of
21 23 crops or livestock; the storage, treatment, or disposal of
21 24 livestock manure; and the application of fertilizers, soil
21 25 conditioners, pesticides, and herbicides on crops.
21 26 Agricultural land includes land on which is located farm
21 27 residences or outbuildings used for agricultural purposes and
21 28 land on which is located facilities, structures, or equipment
21 29 for agricultural purposes. Agricultural land includes land
21 30 taken out of agricultural production for purposes of
21 31 environmental protection or preservation.

21 32 Sec. 30. Section [403.17](#), subsection 9, Code 1999, is
21 33 amended to read as follows:

21 34 9. "Economic development area" means an area of a
21 35 municipality designated by the local governing body as
22 1 appropriate for commercial and industrial enterprises, public
22 2 improvements related to housing and residential development,
22 3 or construction of housing and residential development for low
22 4 and moderate income families, including single or multifamily
22 5 housing. If an urban renewal plan for an urban renewal area
22 6 is based upon a finding that the area is an economic
22 7 development area and that no part contains slum or blighted
22 8 conditions, then the division of revenue provided in section
22 9 403.19 and stated in the plan shall be limited to twenty years
22 10 from the calendar year following the calendar year in which
22 11 the city first certifies to the county auditor the amount of
22 12 any loans, advances, indebtedness, or bonds which qualify for
22 13 payment from the division of revenue provided in section
22 14 403.19. Such designated area shall not include agricultural
22 15 land, including land which is part of a century farm, unless
22 16 the owner of the agricultural land or century farm agrees to
22 17 include the agricultural land or century farm in the urban
22 18 renewal area. For the purposes of this subsection, "century
22 19 farm" means a farm in which at least forty acres of such farm
22 20 have been held in continuous ownership by the same family for

22 21 one hundred years or more.

22 22 Sec. 31. APPLICABILITY. Sections 1, 27, 28, and 29 of
22 23 this Act, enacting section 6A.21, amending sections 403.5 and
22 24 403.7, and enacting section 403.17, subsection 2A, apply to
22 25 urban renewal areas established before, on, or after the
22 26 effective date of this Act and to amendments to such urban
22 27 renewal areas.

22 28 Section 30 of this Act, amending section 403.17, subsection
22 29 9, applies to urban renewal areas established on or after the
22 30 effective date of this Act. Section 30 of this Act also
22 31 applies to agricultural land included in an urban renewal area
22 32 established before the effective date of this Act if the
22 33 agricultural land is included in the urban renewal area by
22 34 virtue of an amendment to the urban renewal plan, which
22 35 amendment is adopted on or after the effective date of this
23 1 Act.

23 2 Sec. 32. EFFECTIVE DATE. This Act applies to state
23 3 highway construction projects approved for commencement by the
23 4 transportation commission on or after July 1, 1999. This Act
23 5 applies to all other condemnation proceedings in which the
23 6 application for condemnation is filed on or after July 1,
23 7 1999.

23 8 EXPLANATION

23 9 This bill makes several changes to the law relating to the
23 10 power of eminent domain and the procedures by which the state
23 11 of Iowa and other entities and persons are allowed to condemn
23 12 private property. The bill defines "acquiring agency" to mean
23 13 entities or persons conferred the right by law to condemn
23 14 private property. "Acquiring agency" under the bill includes
23 15 counties, cities, owners of land without a way to the land,
23 16 owners of mineral lands, cemetery associations, subdistricts
23 17 of soil and water conservation districts, and utilities.

23 18 The bill defines "public use", "public purpose", or "public
23 19 improvement" to exclude the condemnation of agricultural land
23 20 without the consent of the owner. The bill defines
23 21 "agricultural land" as real property used for production of
23 22 certain agricultural commodities and from which \$1,000 or more
23 23 of commodities were sold in a year. The bill defines "private
23 24 development purposes" as the construction of, or improvement
23 25 related to, recreational trails, recreational development paid
23 26 for primarily with private funds, housing and residential
23 27 development, or commercial or industrial enterprise
23 28 development.

23 29 The bill requires a condemning authority to send a notice
23 30 of a proposed public improvement to the owner of property for
23 31 which condemnation is being considered for the public
23 32 improvement. The notice must be mailed by ordinary mail no
23 33 less than 30 days before adoption of the declaration of intent
23 34 relating to the public improvement and the acquisition or
23 35 condemnation of the property. The notice, at a minimum,
24 1 should include information on the general nature of the public
24 2 improvement, the intended use of the property, the process
24 3 relating to the public improvement, and opportunity for public
24 4 input relating to the public improvement if the law requires
24 5 public input.

24 6 The bill requires a condemning authority to make a good
24 7 faith effort to negotiate with the owner to purchase the
24 8 private property before filing an application for
24 9 condemnation. The condemning authority is required to provide
24 10 the owner of the property with a statement of rights. The
24 11 statement is to be included with the notice of proposed public
24 12 improvement. The bill provides that condemnation may not
24 13 proceed until the notice of proposed public improvement
24 14 containing the statement of individual rights is provided to
24 15 the owner.

24 16 The bill requires a condemning authority to mail a copy of
24 17 the condemnation application filed with the district court to

24 18 the owner of the property. The bill also requires that the
24 19 condemnation application provide information on the minimum
24 20 amount of land necessary for the public improvement and the
24 21 amount of land to be acquired by condemnation. Current law
24 22 requires the applicant to pay the expenses of the compensation
24 23 commission and of the landowner if the award of the commission
24 24 is 110 percent or more of the final offer of the applicant
24 25 prior to condemnation. The condemnation application must also
24 26 include a statement of the efforts made by the condemning
24 27 authority to negotiate with the owner for the sale of the
24 28 property prior to filing the application.

24 29 The bill requires that a list of the persons selected to
24 30 serve on the compensation commission for condemnation
24 31 proceedings be provided to the condemnation applicant and to
24 32 the owner of the property. The bill allows the applicant and
24 33 the owner to each dismiss one commissioner without stating
24 34 cause.

24 35 The bill increases from 10 days to 30 days the amount of
25 1 notice given of an assessment of the property. The bill
25 2 provides that service of notice of assessment shall be mailed
25 3 by certified mail to applicants or owners or persons in
25 4 interest, any of whom are not residents of the state. The
25 5 bill also requires that the notice to nonresidents be
25 6 published once 30 days before the assessment.

25 7 The bill increases the amount to be paid in moving expenses
25 8 from \$500 to \$5,000 for an owner or tenant occupying land that
25 9 has been condemned. The bill also increases that distance
25 10 that personal property is moved for which moving expenses are
25 11 paid from 25 miles to 50 miles.

25 12 The bill adds outbuildings to the list of property from
25 13 which a landowner may not be dispossessed by condemnation
25 14 without determination and payment of damages. Outbuildings
25 15 are defined as structures and improvements located in
25 16 proximity to the owner's residence.

25 17 The bill provides that the condemnation applicant shall
25 18 reimburse the county sheriff for the per diem and actual
25 19 expenses paid to members of the compensation commission. The
25 20 bill specifies that the applicant shall reimburse the owner of
25 21 the property for expenses incurred for recording fees,
25 22 mortgage penalty costs, and similar expenses incidental to the
25 23 transfer of the property to the applicant.

25 24 The bill provides that relocation expenses for
25 25 condemnations by the state of Iowa or other entity or person
25 26 having the right to condemn property shall be determined and
25 27 paid in the same manner as relocation expenses for
25 28 condemnations involving federally funded projects.

25 29 The bill requires that a copy of the appraisal, on which
25 30 the purchasing state agency, county, or city will base its
25 31 offer of compensation, be mailed to the owner of the property.

25 32 The bill makes current acquisition policy guidelines for
25 33 projects receiving federal financial assistance applicable to
25 34 any state funded projects and to any other public improvement
25 35 for which condemnation is sought.

26 1 The bill provides that if a city makes a good faith effort
26 2 to comply with notice provisions, that failure to comply may
26 3 only result in a delay of the condemnation proceeding.

26 4 The bill allows a city to condemn agricultural land for an
26 5 industrial enterprise if the land has been located within city
26 6 boundaries for at least three years and the city has applied
26 7 to, and received approval from, the state economic development
26 8 board.

26 9 The bill amends Code sections providing an alternative
26 10 condemnation procedure for counties and secondary roads. The
26 11 county may use the alternative procedure if the right of way
26 12 to be condemned is contiguous to existing road right of way
26 13 and is necessary for maintenance, safety improvement, or
26 14 upgrade of the existing road. The county is also required to

26 15 use the compensation commission to assess damages.

26 16 The bill provides that a municipality (city or county)
26 17 shall not condemn agricultural land included within an urban
26 18 renewal area designated as an economic development area
26 19 without the consent of the owner of the agricultural land.
26 20 This does not apply to city utilities or city franchises.

26 21 The section of the bill amending the definition of
26 22 "economic development area" for purposes of urban renewal,
26 23 applies to urban renewal areas established on or after the
26 24 effective date of the bill. However, the amendment applies to
26 25 urban renewal areas established before the effective date if
26 26 they were amended to add agricultural land to the economic
26 27 development urban renewal area on or after the effective date
26 28 of the bill. The remaining sections of the bill which amend
26 29 or reference Code chapter 403 apply to urban renewal areas
26 30 established before, on, or after the effective date of the
26 31 bill.

26 32 The bill applies to state highway construction projects
26 33 approved on or after July 1, 1999. The bill applies to all
26 34 other condemnation proceedings in which the application for
26 35 condemnation is filed on or after July 1, 1999.

27 1 LSB 2441SC 78

27 2 sc/gg/8.2