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Place On Calendar

HOUSE FILE 2351  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HF 2120)

Passed House, Date 2/15/06 Passed Senate, Date 4/12/06  
Vote: Ayes 83 Nays 15 Vote: Ayes ~~83~~ 43 Nays ~~15~~ 0  
Approved Veto EP 6/2/06

A BILL FOR

*Auto override*  
*7-14-06*

1 An Act relating to government authority, including eminent domain  
2 authority and condemnation procedures, essential county  
3 purposes, and other properly related matters, and including  
4 effective and applicability provisions.

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

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HF 2351

1 Section 1. Section 6A.4, subsection 2, unnumbered  
2 paragraph 1, Code 2005, is amended to read as follows:

3 Upon the owner or lessee of lands, which have no public or  
4 private way to the lands, for the purpose of providing a  
5 public way, ~~not exceeding forty feet in width,~~ which will  
6 connect with an existing public road. The condemned public  
7 way shall not exceed forty feet in width when such lands are  
8 agricultural or have a single residence located on them. For  
9 all other uses, the condemned public way shall not exceed  
10 sixty-six feet. The condemned public way shall be located on  
11 a division, subdivision or "forty" line, or immediately  
12 adjacent thereto, and along the line which is the nearest  
13 feasible route to an existing public road, or along a route  
14 established for a period of ten years or more by an easement  
15 of record or by use and travel to and from the property by the  
16 owner and the general public. The public way shall not  
17 interfere with buildings, orchards, or cemeteries. When  
18 passing through enclosed lands, the public way shall be fenced  
19 on both sides by the condemner upon request of the owner of  
20 the condemned land. The condemner or the condemner's  
21 assignee, shall provide easement for access to the owner of  
22 property severed by the condemnation. The public way shall be  
23 maintained by the condemner or the condemner's assignee, and  
24 shall not be considered any part of the primary or secondary  
25 road systems.

26 Sec. 2. Section 6A.21, subsection 2, Code 2005, is amended  
27 to read as follows:

28 2. The limitation on the definition of public use, public  
29 purpose, or public improvement does not apply to a slum area  
30 or blighted area as ~~defined in section 403.17, or to~~  
31 ~~agricultural land acquired for industry as that term is~~  
32 ~~defined in section 260E.2,~~ provided in section 6A.22 or to the  
33 establishment, relocation, or improvement of a road pursuant  
34 to chapter 306, or to the establishment of a railway under the  
35 supervision of the department of transportation as provided in

1 section 327C.2, or to an airport as defined in section 328.1,  
2 or to land acquired in order to replace or mitigate land used  
3 in a road project when federal law requires replacement or  
4 mitigation. This limitation also does not apply to utilities  
5 or persons under the jurisdiction of the Iowa utilities board  
6 in the department of commerce or to any other utility  
7 conferred the right by statute to condemn private property or  
8 to otherwise exercise the power of eminent domain.

9 Sec. 3. NEW SECTION. 6A.22 ADDITIONAL LIMITATIONS ON  
10 EXERCISE OF POWER -- DEFINITIONS.

11 1. In addition to the limitations in section 6A.21, the  
12 authority of an acquiring agency to condemn any private  
13 property through eminent domain may only be exercised for a  
14 public purpose, public use, or public improvement. However,  
15 if the owner of the property consents to the condemnation, the  
16 property may be condemned for any purpose.

17 2. a. "Public use", "public purpose", or "public  
18 improvement" means one or more of the following:

19 (1) The possession, occupation, and enjoyment of property  
20 by the general public or governmental entities.

21 (2) The acquisition of any interest in property necessary  
22 to the function of a public or private utility, common  
23 carrier, or airport or airport system.

24 (3) Private use that is incidental to the public use of  
25 the property, provided that no property shall be condemned  
26 solely for the purpose of facilitating such incidental private  
27 use.

28 (4) The acquisition of property pursuant to chapter 455H.

29 (5) The acquisition of property in that portion of an  
30 urban renewal area designated as a slum or blighted area if  
31 each parcel, or any improvements thereon, for which  
32 condemnation is sought is determined by the governing body of  
33 the municipality to be in a slum or blighted condition.

34 In any action contesting a determination made pursuant to  
35 this subparagraph (5), the burden of proof is on the

1 municipality to prove by clear and convincing evidence that it  
2 did not abuse its discretion in making such a determination.

3 For purposes of this subparagraph (5), "blighted condition"  
4 means the presence of a substantial number of slum or  
5 deteriorated structures; faulty lot layout in relation to  
6 size, adequacy, or accessibility; insanitary or unsafe  
7 conditions; excessive and uncorrected deterioration of site or  
8 other improvements; tax or special assessment delinquency  
9 exceeding the fair value of the land; defective or unusual  
10 conditions of title; or the existence of conditions which  
11 endanger life or property by fire and other causes; or the  
12 existence of conditions which retard the provision of housing  
13 accommodations for low or moderate income families, or is a  
14 menace to the public health and safety in its present  
15 condition and use.

16 For purposes of this subparagraph (5), "slum condition"  
17 means a condition conducive to ill health, transmission of  
18 disease, infant mortality, juvenile delinquency, or crime, or  
19 detrimental to the public health and safety due to a  
20 predominance of buildings or improvements, whether residential  
21 or nonresidential, by reason of the following: by reason of  
22 dilapidation, deterioration that is excessive and uncorrected,  
23 age or obsolescence; by reason of inadequate provision for  
24 ventilation, light, air, sanitation, or open spaces; by reason  
25 of high density of population and overcrowding; by reason of  
26 the existence of conditions which endanger life or property by  
27 fire and other causes; or by reason of any combination of such  
28 factors.

29 b. Except as specifically included in the definition in  
30 paragraph "a", "public use" or "public purpose" or "public  
31 improvement" does not mean economic development activities  
32 resulting in increased tax revenues, increased employment  
33 opportunities, privately owned or privately funded housing and  
34 residential development, privately owned or privately funded  
35 commercial or industrial development, the lease of publicly

1 owned property to a private party, or recreational development  
2 paid for primarily with private funds.

3 c. Notwithstanding paragraph "a":

4 (1) Private property shall not be condemned for  
5 development or creation of a lake as a surface drinking water  
6 source or for recreational use, for construction of a  
7 landfill, or for construction of sewer treatment facilities,  
8 unless the acquiring agency demonstrates that no other prudent  
9 and feasible alternative exists to accomplish its purpose.

10 (2) Private property shall not be condemned to develop or  
11 create a park or recreational facility unless the acquiring  
12 agency demonstrates that a good faith effort has been made to  
13 purchase a prudent and feasible location from a willing seller  
14 for the park or facility.

15 3. In any action contesting whether eminent domain  
16 authority is being exercised for a public use, public purpose,  
17 or public improvement, the burden of proof is on the acquiring  
18 agency to prove by clear and convincing evidence that the  
19 proposed use of the property meets the definition of public  
20 use, public purpose, or public improvement in subsection 2 and  
21 that there is no prudent and feasible alternative to  
22 condemnation of the property.

23 Sec. 4. Section 6B.2A, subsection 1, unnumbered paragraph  
24 1, Code 2005, is amended to read as follows:

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

1 property or property interest at the owner's and contract  
2 purchaser's last known address as shown in the records of the  
3 county auditor not less than seven days nor more than fourteen  
4 days prior to the date of mailing. A change in ownership of  
5 any such property which is not reflected in the records of the  
6 county auditor during the period those records are searched as  
7 above provided shall not affect the validity of the notice or  
8 any condemnation proceeding commenced on the basis of such  
9 notice. The notice shall be given and the public hearing held  
10 before adoption of the ordinance, resolution, motion, or other  
11 declaration of intent to fund the final site-specific design  
12 for the public improvement, to make the final selection of the  
13 route or site location for the public improvement, or to  
14 acquire or condemn, if necessary, all or a portion of the  
15 property or an interest in the property for the public  
16 improvement. If the location of the public improvement is  
17 changed or expanded after the decision has been made to  
18 proceed with the public improvement, a notice shall be mailed  
19 by ordinary mail no less than thirty days before the adoption  
20 of the ordinance, resolution, motion, or other declaration of  
21 intent to proceed with a change in the location of the public  
22 improvement to the owner and any contract purchaser of record  
23 of the land property to be acquired or condemned, if  
24 necessary, in the new location of the public improvement  
25 affected by the change. The mailed notice shall, at a  
26 minimum, include the following information:

27 Sec. 5. Section 6B.2A, subsection 2, unnumbered paragraph  
28 1, Code 2005, is amended to read as follows:

29 The acquiring agency shall cause a notice to be published  
30 once in a newspaper of general circulation in the county or  
31 city where the agricultural-land property to be acquired or  
32 condemned is located. The acquiring agency shall also post  
33 the notice in a conspicuous place on the property. The notice  
34 shall be published and posted at least four but no more than  
35 twenty days before the public hearing is held as referred to

1 in subsection 1. The published notice shall, at a minimum,  
2 include the following information:

3 Sec. 6. Section 6B.2A, subsection 4, Code 2005, is amended  
4 to read as follows:

5 4. This section shall apply to the state department of  
6 transportation only when the property to be condemned by or on  
7 behalf of the department is agricultural land. However, this  
8 section shall not apply to a condemnation of property  
9 agricultural land by the state department of transportation or  
10 a county for right-of-way that is contiguous to an existing  
11 road right-of-way and necessary for the maintenance, safety  
12 improvement, repair, or upgrade of the existing road.

13 Notwithstanding section 6B.2C, a condemnation of property by  
14 the state department of transportation pursuant to this  
15 subsection shall be approved by the director of the department  
16 of transportation. For purposes of this subsection, "upgrade"  
17 means to bring a road or bridge up to currently acceptable  
18 standards, including improved geometrics, passing lanes,  
19 turning lanes, climbing lanes, and improved shoulders.  
20 "Upgrade" does not include expanding a highway from two lanes  
21 to four lanes.

22 Sec. 7. Section 6B.2B, Code 2005, is amended to read as  
23 follows:

24 6B.2B ACQUISITION NEGOTIATION STATEMENT-OF-RIGHTS.

25 The acquiring agency shall make a good faith effort to  
26 negotiate with the owner to purchase the private property or  
27 property interest before filing an application for  
28 condemnation or otherwise proceeding with the condemnation  
29 process. An acquiring agency shall not make an offer to  
30 purchase the property or property interest that is less than  
31 the fair market value the acquiring agency has established for  
32 the property or property interest pursuant to the appraisal  
33 required in section 6B.45 or less than the value determined  
34 under the acquiring agency's waiver procedure established  
35 pursuant to section 6B.54, subsection 2, for acquisition of

1 property with a low fair market value. A purchase offer made  
2 by an acquiring agency shall include provisions for payment to  
3 the owner of expenses, including relocation expenses, expenses  
4 listed in section 6B.54, subsection 10, and other expenses  
5 required by law to be paid by an acquiring agency to a  
6 condemnee. However, an in the alternative, the acquiring  
7 agency may offer, and the owner may accept, a purchase offer  
8 from the acquiring agency that is an amount equal to one  
9 hundred twenty-five percent of the appraisal amount plus  
10 payment to the owner of expenses listed in section 6B.54,  
11 subsection 10, once those expenses have been determined. If  
12 the owner accepts such a purchase offer, the owner is barred  
13 from claiming payment from the acquiring agency for any other  
14 expenses allowed by law. An acquiring agency need not make an  
15 offer in excess of that-amount the amounts described in this  
16 section in order to satisfy the requirement to negotiate in  
17 good faith. An-acquiring-agency-is-deemed-to-have-met-the  
18 requirements-of-this-section-if-the-acquiring-agency-complies  
19 with-section-6B-54-

20 Sec. 8. Section 6B.3, subsection 1, paragraph d, Code  
21 2005, is amended to read as follows:

22 d. The purpose for which condemnation is sought. For  
23 ~~purposes-of-section-6B-4A, if condemnation of agricultural~~  
24 ~~land-is-sought-by-a-city-or-county, or an agency of a city or~~  
25 ~~county, for location of an industry as that term is defined in~~  
26 ~~section-260E-2, the application shall so state.--However, the~~  
27 ~~city or county shall not be required to disclose information~~  
28 ~~on an industrial prospect with which the city or county is~~  
29 ~~currently negotiating-~~

30 Sec. 9. Section 6B.3, subsection 2, unnumbered paragraph  
31 1, Code 2005, is amended to read as follows:

32 The applicant shall mail a copy of the application by  
33 certified mail to the owner at the owner's last known address  
34 and to any record lienholder or encumbrancer of the property  
35 at the lienholder's or encumbrancer's last known address. The

1 applicant shall also cause the application to be published  
2 once in a newspaper of general circulation in the county, not  
3 less than four nor more than twenty days before the meeting of  
4 the compensation commission to assess the damages. Service of  
5 the application by publication shall be deemed complete on the  
6 day of publication. The applicant shall also post a copy of  
7 the application in a conspicuous place on the property not  
8 less than four nor more than twenty days before the meeting of  
9 the compensation commission to assess the damages.

10 Sec. 10. Section 6B.3, subsection 3, unnumbered paragraph  
11 2, Code 2005, is amended to read as follows:

12 When indexed, the proceeding is considered pending so as to  
13 charge all persons not having an interest in the property with  
14 notice of its pendency, and while pending no interest can be  
15 acquired by the third parties in the property against the  
16 rights of the applicant. If the appraisalment of damages by  
17 the commission pursuant to section 6B.14 is not made within  
18 one hundred twenty days of indexing, the proceedings  
19 instituted under this section are terminated and all rights  
20 and interests of the applicant arising out of the application  
21 for condemnation terminate. The applicant may reinstitute a  
22 new condemnation proceeding at any time. The reinstated  
23 proceedings are entirely new proceedings and not a revival of  
24 the terminated proceeding.

25 Sec. 11. NEW SECTION. 6B.3A CHALLENGE BY OWNER.

26 An owner of property described in an application for  
27 condemnation may bring an action to challenge the exercise of  
28 eminent domain authority or the condemnation proceedings in  
29 the district court of the county in which the private property  
30 is situated. The action shall be brought within thirty days  
31 from the date of mailing the notice of appraisalment of damages  
32 under section 6B.18. Notice of the action shall be given as  
33 provided in section 6B.18.

34 Sec. 12. Section 6B.8, Code 2005, is amended to read as  
35 follows:

1 6B.8 NOTICE OF ASSESSMENT.

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

18 Sec. 13. Section 6B.14, unnumbered paragraph 2, Code 2005,  
19 is amended to read as follows:

20 Prior to the meeting of the commission, the commission or a  
21 commissioner shall not communicate with the applicant,  
22 property owner, or tenant, or their agents, regarding the  
23 condemnation proceedings. The commissioners shall meet in  
24 open session to view the property and to receive evidence, ~~but~~  
25 may and shall deliberate in ~~closed~~ open session. After  
26 deliberations commence, the commission and each commissioner  
27 is prohibited from communicating with any party to the  
28 proceeding, unless such communication occurs in the presence  
29 of or with the consent of the property owner and the other  
30 parties who appeared before the commission. The commission  
31 shall keep minutes of all its meetings showing the date, time,  
32 and place, the members present, and the action taken at each  
33 meeting. The minutes shall show the results of each vote  
34 taken and information sufficient to indicate the vote of each  
35 member present. The vote of each member present shall be made

1 public at the open session. The minutes shall be public  
2 records open to public inspection.

3 Sec. 14. Section 6B.14, Code 2005, is amended by adding  
4 the following new unnumbered paragraph after unnumbered  
5 paragraph 2:

6 NEW UNNUMBERED PARAGRAPH. In determining fair market value  
7 of property, the commissioners shall not consider only the  
8 assessed value assigned to such property for purposes of  
9 property taxation.

10 Sec. 15. Section 6B.42, subsection 1, Code 2005, is  
11 amended to read as follows:

12 1. a. The If condemnation of property will result in the  
13 displacement of a person, the acquiring agency shall provide  
14 to the person, in addition to any other sums of money in  
15 payment of just compensation and upon proper application to  
16 the acquiring agency, the payments and assistance required by  
17 law, in accordance with chapter 316 payment for actual  
18 reasonable and necessary expenses incurred in moving the  
19 person, the person's family, business, farm operation, or  
20 other personal property. The payment may also provide for  
21 actual direct losses of tangible personal property, purchase  
22 of substitute personal property, business reestablishment  
23 expenses, storage expenses, and expenses incurred in searching  
24 for a replacement business or farm operation. If relocation  
25 of a business or farm operation is not economically feasible,  
26 the displaced person may also apply for payment of the loss of  
27 existing business relationships because of the inability to  
28 relocate the business or farm operation to a location similar  
29 in economic advantage to the location from which the business  
30 or farm operation was moved.

31 b. A person aggrieved by a determination made as to  
32 eligibility for relocation assistance, a payment, or the  
33 amount of the payment, upon application, may apply to have the  
34 matter reviewed by the appropriate acquiring agency.

35 c. An acquiring agency subject to this section that

1 proposes to displace a person shall inform the person of the  
2 person's right to receive relocation assistance and payments,  
3 and of an aggrieved person's right to appeal a determination  
4 as to assistance and payments.

5 Sec. 16. Section 6B.45, Code 2005, is amended to read as  
6 follows:

7 6B.45 MAILING COPY OF APPRAISAL.

8 When any real property or interest in real property is to  
9 be purchased, or in lieu thereof to be condemned, the  
10 acquiring agency or its agent shall submit to the person,  
11 corporation, or entity whose property or interest in the  
12 property is to be taken, by ordinary mail, at least ten days  
13 prior to the date upon which the acquiring agency or its agent  
14 contacts the property owner to commence negotiations, a copy  
15 of the appraisal in its entirety upon such real property or  
16 interest in such real property prepared for the acquiring  
17 agency or its agent, which shall include, at a minimum, an  
18 itemization of the appraised value of the real property or  
19 interest in the property, any buildings on the property, all  
20 other improvements including fences, severance damages, and  
21 loss of access. In determining fair market value of property,  
22 the commissioners shall not consider only the assessed value  
23 assigned to such property for purposes of property taxation.  
24 The appraisal sent to the condemnee shall be that appraisal  
25 upon which the condemnor will rely to establish an amount  
26 which the condemnor believes to be just compensation for the  
27 real property. All other appraisals made on the property as a  
28 result of the condemnation proceeding shall be made available  
29 to the condemnee upon request. In lieu of an appraisal, a  
30 utility or person under the jurisdiction of the utilities  
31 board of the department of commerce, or any other utility  
32 conferred the right by statute to condemn private property,  
33 shall provide in writing by certified mail to the owner of  
34 record thirty days prior to negotiations, the methods and  
35 factors used in arriving at an offered price for voluntary

1 easements including the range of cash amount of each  
2 component. An acquiring agency may obtain a signed written  
3 waiver from the landowner to allow negotiations to commence  
4 prior to the expiration of the applicable waiting period for  
5 the commencement of negotiations.

6 Sec. 17. Section 6B.54, Code 2005, is amended to read as  
7 follows:

8 6B.54 ~~FEDERALLY-ASSISTED-PROJECT-AND-DISPLACING-ACTIVITIES~~  
9 -- ACQUISITION POLICIES FOR ACQUIRING AGENCIES.

10 For any ~~project-or-displacing-activity-that-has-received-or~~  
11 ~~will-receive-federal-financial-assistance-as-defined-in~~  
12 ~~section-316.17-for-any-state-funded-projects,-or-for-any-other~~  
13 public use, public purpose, or public improvement for which  
14 condemnation is sought, an acquiring agency shall, at a  
15 minimum, satisfy the following policies:

16 1. Every reasonable and good faith effort shall be made to  
17 acquire expeditiously real property by negotiation as provided  
18 in section 6B.2B.

19 2. Real property shall be appraised as required by section  
20 6B.45 before the initiation of negotiations, and the owner or  
21 the owner's designated representative shall be given an  
22 opportunity to accompany at least one appraiser of the  
23 acquiring agency during an inspection of the property, except  
24 that an acquiring agency may prescribe a procedure to waive  
25 the appraisal in cases involving the acquisition of property  
26 with a low fair market value. In lieu of an appraisal, a  
27 utility or person under the jurisdiction of the utilities  
28 board of the department of commerce, or any other utility  
29 conferred the right by statute to condemn private property,  
30 shall provide in writing by certified mail to the owner of  
31 record thirty days before negotiations, the methods and  
32 factors used in arriving at an offered price for voluntary  
33 easements including the range of cash amount of each  
34 component.

35 3. Before the initiation of negotiations for real

1 property, the acquiring agency shall establish an amount which  
2 it believes to be just compensation for the real property, and  
3 shall make a prompt offer to acquire the property for the full  
4 amount established by the agency. In no event shall the  
5 amount be less than the ~~lowest appraisal of the~~ fair market  
6 value of the acquiring agency has established for the property  
7 or property interest pursuant to the appraisal required in  
8 section 6B.45 or less than the value determined under the  
9 acquiring agency's waiver procedure established pursuant to  
10 subsection 2. A purchase offer made by an acquiring agency  
11 shall include provisions for payment to the owner of expenses,  
12 including relocation expenses, expenses listed in subsection  
13 10, and other expenses required by law to be paid by an  
14 acquiring agency to a condemnee. However, in the alternative,  
15 the acquiring agency may offer, and the owner may accept, a  
16 purchase offer from the acquiring agency that is an amount  
17 equal to one hundred twenty-five percent of the appraisal  
18 amount plus payment to the owner of expenses listed in  
19 subsection 10, once those expenses have been determined. If  
20 the owner accepts such a purchase offer, the owner is barred  
21 from claiming payment from the acquiring agency for any other  
22 expenses allowed by law. In the case of a utility or person  
23 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, the amount shall  
26 not be less than the amount indicated by the methods and  
27 factors used in arriving at an offered price for a voluntary  
28 easement.

29 4. The construction or development of a public improvement  
30 shall be so scheduled that, to the greatest extent  
31 practicable, no person lawfully occupying real property shall  
32 be required to move from a dwelling or to move the person's  
33 business or farm operation without at least ninety days'  
34 written notice of the date by which the move is required.

35 5. If after damages have been finally determined and paid,

1 an owner or tenant is permitted to occupy the real property  
2 acquired on a rental basis for a short term or for a period  
3 subject to termination on short notice, the amount of rent  
4 required shall not exceed the fair rental value of the  
5 property to a short-term occupier.

6 6. In no event shall the time of condemnation be advanced,  
7 or negotiations or condemnation and the deposit of funds in  
8 court for the use of the owner be deferred, or any other  
9 coercive action be taken to compel an agreement on the price  
10 to be paid for the property.

11 7. If an interest in real property is to be acquired by  
12 exercise of the power of eminent domain, formal condemnation  
13 proceedings shall be instituted. The acquiring agency shall  
14 not intentionally make it necessary for an owner to institute  
15 legal proceedings to prove the fact of the taking of the  
16 owner's real property.

17 8. If the acquisition of only a portion of property would  
18 leave the owner with an uneconomical remnant, the acquiring  
19 agency shall offer to acquire that remnant. For the purposes  
20 of this chapter, an "uneconomical remnant" is a parcel of real  
21 property in which the owner is left with an interest after the  
22 partial acquisition of the owner's property, where the  
23 acquiring agency determines that the parcel has little or no  
24 value or utility to the owner.

25 9. A person whose real property is being acquired in  
26 accordance with this chapter, after the person has been fully  
27 informed of the person's right to receive just compensation  
28 for the property, may donate the property, any part of the  
29 property, any interest in the property, or any compensation  
30 paid for it as the person may determine.

31 10. As soon as practicable after the date of payment of  
32 the purchase price or the date of deposit in court of funds to  
33 satisfy the award of compensation in a condemnation proceeding  
34 to acquire real property, whichever is earlier, the acquiring  
35 agency shall reimburse the owner, to the extent the acquiring

1 agency deems fair and reasonable, for expenses the owner  
2 necessarily incurred for all of the following:

3 a. Recording fees, transfer taxes, and similar expenses  
4 incidental to conveying the real property to the acquiring  
5 agency.

6 b. Penalty costs for full or partial prepayment of any  
7 preexisting recorded mortgage entered into in good faith  
8 encumbering the real property.

9 c. Reasonable attorney fees and reasonable costs,  
10 including expert witness fees and fees relating to appraisal  
11 of the property.

12 Payments and expenditures under this subsection are  
13 incident to and arise out of the program or project for which  
14 the acquisition activity takes place. Such payments and  
15 expenditures may be made from the funds made available for the  
16 program or project.

17 A person aggrieved by a determination as to the eligibility  
18 for or amount of a reimbursement may apply to have the matter  
19 reviewed by the acquiring agency or in accordance with section  
20 316.9 if applicable.

21 11. An owner shall not be required to surrender possession  
22 of real property before the acquiring agency concerned pays  
23 the agreed purchase price.

24 12. After damages have been finally determined and paid,  
25 the acquiring agency may offer, and the owner may accept, an  
26 amount equal to twenty-five percent of the amount of damages  
27 plus payment to the owner of expenses listed in subsection 10,  
28 once those expenses have been determined. If the owner  
29 accepts such an offer, the owner is barred from claiming  
30 payment from the acquiring agency for any other expenses  
31 allowed by law.

32 Sec. 18. Section 6B.55, unnumbered paragraph 1, Code 2005,  
33 is amended to read as follows:

34 For any ~~program or project that has received or will~~  
35 ~~receive federal financial assistance as defined in section~~

1 ~~316.17~~ ~~for any state-funded projects, or for any other~~ public  
2 use, public purpose, or public improvement for which  
3 condemnation is sought, an acquiring agency shall at a minimum  
4 satisfy the following policies:

5 Sec. 19. Section 6B.56, subsection 2, Code 2005, is  
6 amended to read as follows:

7 2. Before the real property may be offered for sale to the  
8 general public, the condemner shall notify the prior owner of  
9 the real property condemned in writing of the condemner's  
10 intent to dispose of the real property, of the current  
11 appraised value of the real property, and of the prior owner's  
12 right to purchase the real property within sixty days from the  
13 date the notice is served at a price equal to the current  
14 appraised value of the real property or the fair market value  
15 of the property at the time it was acquired by the acquiring  
16 agency from the prior owner, whichever is less. The notice  
17 sent by the condemner as provided in this subsection shall be  
18 filed with the office of the recorder in the county in which  
19 the real property is located.

20 Sec. 20. NEW SECTION. 6B.56A DISPOSITION OF CONDEMNED  
21 PROPERTY -- ACTION TO RECLAIM.

22 When five years have elapsed since property was condemned  
23 and the property has not been used for the purpose stated in  
24 the application filed pursuant to section 6B.3 and the  
25 acquiring agency has not taken action to dispose of the  
26 property pursuant to section 6B.56, the previous owner may  
27 bring an action in the district court where the property is  
28 located to reclaim title to the property. The action shall be  
29 brought within one hundred eighty days after the five-year  
30 time period has elapsed. Upon the filing of the action with  
31 the court, the previous owner shall pay to the county sheriff  
32 that portion of the damages which reflected the fair market  
33 value of the property at the time of acquisition. After  
34 notice of the action has been served on the acquiring agency,  
35 the previous owner shall also file a copy of the notice with

1 the county recorder for recording. Thirty days after service  
2 of the notice, and upon proof of payment to the sheriff being  
3 filed with the court, the court shall order that title to the  
4 property be transferred to the previous owner.

5 An acquiring agency shall give written notice to the owner  
6 of the right to reclaim title under this section at the time  
7 damages are paid to the owner.

8 This section does not apply to property acquired by the  
9 state department of transportation.

10 Sec. 21. NEW SECTION. 6B.60 RENTAL CHARGES PROHIBITED.

11 Rent for property for which damages have been determined  
12 shall not be charged and shall not accrue against the property  
13 owner until such damages have been finally determined and paid  
14 and all court challenges related to the condemnation have been  
15 finally adjudicated.

16 Sec. 22. NEW SECTION. 6B.61 APPROVAL OF LOCAL ELECTED  
17 OFFICIALS REQUIRED.

18 Notwithstanding any provision of law to the contrary, any  
19 entity created by or on behalf of one or more political  
20 subdivisions and granted, by statute, eminent domain authority  
21 to acquire property shall not exercise such authority without  
22 first presenting the proposal to acquire property by eminent  
23 domain to the governing body of each political subdivision  
24 that created the entity or on whose behalf the entity was  
25 created and such proposal receives the approval, by  
26 resolution, of each governing body.

27 Sec. 23. Section 28F.11, Code 2005, is amended to read as  
28 follows:

29 28F.11 EMINENT DOMAIN.

30 Any public agency participating in an agreement authorizing  
31 the joint exercise of governmental powers pursuant to this  
32 chapter may exercise its power of eminent domain to acquire  
33 interests in property, under provisions of law then in effect  
34 and applicable to the public agency, for the use of the entity  
35 created to carry out the agreement, provided that the power of

1 eminent domain is not used to acquire interests in property  
2 which is part of a system of facilities in existence, under  
3 construction, or planned, for the generation, transmission or  
4 sale of electric power. In the exercise of the power of  
5 eminent domain, the public agency shall proceed in the manner  
6 provided by chapter 6B. Any interests in property acquired  
7 are acquired for a public purpose, as defined in chapter 6A,  
8 of the condemning public agency, and the payment of the costs  
9 of the acquisition may be made pursuant to the agreement or to  
10 any separate agreement between the public agency and the  
11 entity or the other public agencies participating in the  
12 entity or any of them. Upon payment of costs, any property  
13 acquired is the property of the entity.

14 Sec. 24. Section 316.4, subsection 1, Code 2005, is  
15 amended to read as follows:

16 1. If a program or project undertaken by a displacing  
17 agency will result in the displacement of a person, the  
18 displacing agency shall make a payment to the displaced  
19 person, upon proper application as approved by the displacing  
20 agency, for actual reasonable and necessary expenses incurred  
21 in moving the person, the person's family, business, farm  
22 operation, or other personal property subject to rules and  
23 limits established by the department. The payment may also  
24 provide for actual direct losses of tangible personal  
25 property, purchase of substitute personal property, business  
26 reestablishment expenses, storage expenses, and expenses  
27 incurred in searching for a replacement business or farm. If  
28 relocation of a business or farm operation is not economically  
29 feasible, the displaced person may also apply for payment of  
30 the loss of existing business relationships because of the  
31 inability to relocate the business or farm operation to a  
32 location similar in economic advantage to the location from  
33 which the business or farm operation was moved.

34 Sec. 25. Section 327I.7, subsection 4, Code 2005, is  
35 amended to read as follows:

1 4. Exercise the power of eminent domain consistent with  
2 the provisions of chapters 6A and 6B.

3 Sec. 26. Section 330A.8, subsection 11, Code 2005, is  
4 amended to read as follows:

5 11. To have the power of eminent domain, ~~such power to be~~  
6 ~~exercised in the manner provided by law for municipal~~  
7 ~~corporations of this state~~ but only as provided in section  
8 330A.13.

9 Sec. 27. Section 331.441, subsection 2, paragraph b,  
10 subparagraph (12), Code Supplement 2005, is amended to read as  
11 follows:

12 (12) Funding the acquisition, construction,  
13 reconstruction, improvement, repair, or equipping of  
14 waterworks, water mains and extensions, ponds, reservoirs,  
15 capacity, wells, dams, pumping installations, real and  
16 personal property, or other facilities available or used for  
17 the storage, transportation, or utilization of water.

18 (a) The county board of supervisors may on its own motion  
19 or upon a written petition of a water supplier established  
20 under chapter 357A or 504 direct the county auditor to  
21 establish a special service area tax district for the purpose  
22 of issuing general obligation bonds. The special service area  
23 tax district shall include only unincorporated portions of the  
24 county and shall be drawn according to engineering  
25 recommendations provided by the water supplier or the county  
26 engineer ~~and, in addition, shall be drawn in order that an~~  
27 ~~election provided for in subparagraph subdivision (b) can be~~  
28 ~~administered.~~ The county's debt service tax levy for the  
29 county general obligation bonds issued for the purposes set  
30 out in this subparagraph shall be levied only against taxable  
31 property within the county which is included within the  
32 boundaries of the special service area tax district. An owner  
33 of property not included within the boundaries of the special  
34 service area tax district may petition the board of  
35 supervisors to be included in the special service area tax

1 district subsequent to its establishment.

2 ~~{b)--General obligation bonds for the purposes described in~~  
3 ~~this subparagraph are subject to an election held in the~~  
4 ~~manner provided in section 331.442, subsections 1 through 4,~~  
5 ~~if not later than fifteen days following the action by the~~  
6 ~~county board of supervisors, eligible electors file a petition~~  
7 ~~with the county commissioner of elections asking that the~~  
8 ~~question of issuing the bonds be submitted to the registered~~  
9 ~~voters of the special service area tax district.--The petition~~  
10 ~~must be signed by eligible electors equal in number to at~~  
11 ~~least five percent of the registered voters residing in the~~  
12 ~~special service area tax district.--If the petition is duly~~  
13 ~~filed within the fifteen days, the board of supervisors shall~~  
14 ~~either adopt a resolution declaring that the proposal to issue~~  
15 ~~the bonds is abandoned, or direct the county commissioner of~~  
16 ~~elections to call a special election within a special service~~  
17 ~~area tax district upon the question of issuing the bonds.~~

18 Sec. 28. Section 346.27, subsection 9, paragraph b, Code  
19 2005, is amended to read as follows:

20 b. To acquire in the corporate name of the authority the  
21 fee simple title to the real property located within the area  
22 by purchase, gift, devise, or by the exercise of the power of  
23 eminent domain consistent with the provisions of chapters 6A  
24 and 6B, or to take possession of real estate by lease.

25 Sec. 29. Section 364.4, subsection 1, Code 2005, is  
26 amended to read as follows:

27 1. Acquire, hold, and dispose of property outside the city  
28 in the same manner as within. However, the power of a city to  
29 acquire property outside the city does not include the power  
30 to acquire property outside the city by eminent domain, except  
31 for the following:

32 a. The operation of a city utility as defined in section  
33 362.2.

34 b. The operation of a city franchise conferred the  
35 authority to condemn private property under section 364.2.

1 c. The operation of a combined utility system as defined  
2 in section 384.80.

3 Sec. 30. Section 389.3, unnumbered paragraph 2, Code 2005,  
4 is amended to read as follows:

5 A joint water utility is a political subdivision and an  
6 instrumentality of municipal government. The statutory  
7 powers, duties, and limitations conferred upon a city utility  
8 apply to a joint water utility, except that title to property  
9 of a joint water utility may be held in the name of the joint  
10 water utility. The joint water utility board shall have all  
11 powers and authority of a city with respect to property which  
12 is held by the joint water utility. A joint water utility  
13 shall have the power of eminent domain, including the powers,  
14 duties, and limitations conferred upon a city in chapters 6A  
15 and 6B, for the purposes of constructing and operating a joint  
16 water utility.

17 Sec. 31. Section 403.2, subsection 4, Code 2005, is  
18 amended to read as follows:

19 4. It is further found and declared that the powers  
20 conferred by this chapter are for public uses and purposes for  
21 which public money may be expended and for which the power of  
22 eminent domain, to the extent authorized, and police power  
23 exercised; and that the necessity in the public interest for  
24 the provisions herein enacted is hereby declared as a matter  
25 of legislative determination.

26 Sec. 32. Section 403.5, subsection 4, paragraph b,  
27 subparagraph (2), Code 2005, is amended to read as follows:

28 (2) If it is to be developed for nonresidential uses, the  
29 local governing body shall determine that such nonresidential  
30 uses are necessary and appropriate to facilitate the proper  
31 growth and development of the community in accordance with  
32 sound planning standards and local community objectives.

33 PARAGRAPH DIVIDED. The acquisition of open land authorized  
34 in subparagraphs (1) and (2) may require the exercise of  
35 governmental action, as provided in this chapter, because of

1 defective or unusual conditions of title, diversity of  
2 ownership, tax delinquency, improper subdivisions, outmoded  
3 street patterns, deterioration of site, economic disuse,  
4 unsuitable topography or faulty lot layouts, or because of the  
5 need for the correlation of the area with other areas of a  
6 municipality by streets and modern traffic requirements, or  
7 any combination of such factors or other conditions which  
8 retard development of the area. If such governmental action  
9 involves the exercise of eminent domain authority, the  
10 municipality is subject to the limitations of this chapter and  
11 chapters 6A and 6B.

12 Sec. 33. Section 403.5, subsection 4, unnumbered paragraph  
13 2, Code 2005, is amended by striking the unnumbered paragraph.

14 Sec. 34. Section 403.6, subsection 3, Code 2005, is  
15 amended to read as follows:

16 3. Within its area of operation, to enter into any  
17 building or property in any urban renewal area in order to  
18 make inspections, surveys, appraisals, soundings or test  
19 borings, and to obtain an order for this purpose from a court  
20 of competent jurisdiction in the event entry is denied or  
21 resisted; to acquire by purchase, lease, option, gift, grant,  
22 bequest, devise, eminent domain or otherwise, any real  
23 property, or personal property for administrative purposes,  
24 together with any improvements thereon; to hold, improve,  
25 clear or prepare for redevelopment any such property; to  
26 mortgage, pledge, hypothecate or otherwise encumber or dispose  
27 of any real property; to insure or provide for the insurance  
28 of any real or personal property or operations of the  
29 municipality against any risks or hazards, including the power  
30 to pay premiums on any such insurance; and to enter into any  
31 contracts necessary to effectuate the purposes of this  
32 ~~chapter:--Provided, however, that no statutory provision with~~  
33 ~~respect to the acquisition, clearance or disposition of~~  
34 ~~property by public bodies shall restrict a municipality or~~  
35 ~~other public body exercising powers hereunder in the exercise~~

1 ~~of such functions with respect to an urban renewal project,~~  
2 ~~unless the legislature shall specifically so state.~~ A  
3 municipality or other public body exercising powers under this  
4 chapter with respect to the acquisition, clearance, or  
5 disposition of property shall not be restricted by any other  
6 statutory provision in the exercise of such powers unless such  
7 statutory provision specifically states its application to  
8 this chapter or unless this chapter specifically applies  
9 restrictions contained in another statutory provision to the  
10 powers that may be exercised under this chapter.

11 Sec. 35. Section 403.7, Code 2005, is amended to read as  
12 follows:

13 403.7 CONDEMNATION OF PROPERTY.

14 1. A municipality shall have the right to acquire by  
15 condemnation any interest in real property, including a fee  
16 simple title thereto, which it may deem necessary for or in  
17 connection with an urban renewal project under this chapter,  
18 subject to the limitations on eminent domain authority in  
19 chapter 6A. However, a municipality shall not condemn  
20 agricultural land included within an economic development area  
21 for any use unless the owner of the agricultural land consents  
22 to condemnation or unless ~~the agricultural land is to be~~  
23 ~~acquired for industry as that term is defined in section~~  
24 ~~260E-2~~ the municipality determines that the land is necessary  
25 or useful for any of the following:

26 a. The operation of a city utility as defined in section  
27 362.2.

28 b. The operation of a city franchise conferred the  
29 authority to condemn private property under section 364.2.

30 c. The operation of a combined utility system as defined  
31 in section 384.80.

32 2. A municipality ~~may~~ shall exercise the power of eminent  
33 domain in the manner provided in chapter 6B, ~~and Acts~~  
34 ~~amendatory to that chapter or supplementary to that chapter,~~  
35 ~~or it may exercise the power of eminent domain in the manner~~

~~1 now or which may be hereafter provided by any other statutory~~  
~~2 provisions for the exercise of the power of eminent domain.~~  
3 Property already devoted to a public use may be acquired in  
4 like manner. However, real property belonging to the state,  
5 or any political subdivision of this state, shall not be  
6 acquired without its consent, and real property or any right  
7 or interest in the property owned by any public utility  
8 company, pipeline company, railway or transportation company  
9 vested with the right of eminent domain under the laws of this  
10 state, shall not be acquired without the consent of the  
11 company, or without first securing, after due notice to the  
12 company and after hearing, a certificate authorizing  
13 condemnation of the property from the board, commission, or  
14 body having the authority to grant a certificate authorizing  
15 condemnation.

16 3. In a condemnation proceeding, if a municipality  
17 proposes to take a part of a lot or parcel of real property,  
18 the municipality shall also take the remaining part of the lot  
19 or parcel if requested by the owner.

20 Sec. 36. Section 403A.3, subsection 4, Code 2005, is  
21 amended to read as follows:

22 4. To lease or rent any dwellings, accommodations, lands,  
23 buildings, structures or facilities embraced in any project  
24 and (subject to the limitations contained in this chapter with  
25 respect to the rental of dwellings in housing projects) to  
26 establish and revise the rents or charges therefor; to own,  
27 hold and improve real or personal property; to purchase,  
28 lease, obtain options upon, acquire by gift, grant, bequest,  
29 devise or otherwise any real or personal property or any  
30 interest therein; to acquire by the exercise of the power of  
31 eminent domain any real property subject to section 403A.20;  
32 to sell, lease, exchange, transfer, assign, pledge or dispose  
33 of any real or personal property or any interest therein; to  
34 insure or provide for the insurance, in any stock or mutual  
35 company of any real or personal property or operations of the

1 municipality against any risks or hazards; to procure or agree  
2 to the procurement of federal or state government insurance or  
3 guarantees of the payment of any bonds or parts thereof issued  
4 by a municipality, including the power to pay premiums on any  
5 such insurance.

6 Sec. 37. Section 403A.20, Code 2005, is amended to read as  
7 follows:

8 403A.20 CONDEMNATION OF PROPERTY.

9 A municipality shall have the right to acquire by  
10 condemnation any interest in real property, including a fee  
11 simple title thereto, which it may deem necessary for or in  
12 connection with a municipal housing project under this  
13 chapter, subject to the limitations on eminent domain  
14 authority in chapter 6A. A municipality ~~may~~ shall exercise  
15 the power of eminent domain in the manner provided in chapter  
16 ~~6B, and acts amendatory thereof or supplementary thereto, or~~  
17 ~~it may exercise the power of eminent domain in the manner now~~  
18 ~~or which may be hereafter provided by any other statutory~~  
19 ~~provisions for the exercise of the power of eminent domain.~~  
20 Property already devoted to a public use may be acquired in  
21 like manner: ~~---Provided, that no.~~ However, real property  
22 belonging to the state, or any political subdivision thereof,  
23 ~~may~~ shall not be acquired without its consent, provided  
24 ~~further that no~~ and real property or any right or interest  
25 ~~therein~~ in the property owned by any public utility company,  
26 pipeline company, railway or transportation company vested  
27 with the right of eminent domain under the laws of this state,  
28 shall not be acquired without the consent of ~~such~~ the company,  
29 or without first securing, after due notice to ~~such~~ the  
30 company and after hearing, a certificate authorizing  
31 condemnation of such property from the board, commission, or  
32 body having the authority to grant a certificate authorizing  
33 condemnation.

34 In a condemnation proceeding, if a municipality proposes to  
35 take a part of a lot or parcel of real property, the

1 municipality shall also take the remaining part of the lot or  
2 parcel if requested by the owner.

3 Sec. 38. Section 422.73, Code 2005, is amended by adding  
4 the following new subsection:

5 NEW SUBSECTION. 3. Notwithstanding subsection 1, a claim  
6 for credit or refund of the income tax paid on the gain  
7 realized from the involuntary conversion of property due to a  
8 condemnation action is timely filed with the department as  
9 provided in this subsection if the taxpayer's claim is the  
10 result of the reacquisition by the taxpayer, as the prior  
11 owner, of the property condemned pursuant to section 6B.56,  
12 subsection 2, or section 6B.56A. The claim under this  
13 subsection shall be timely filed only if the claim is made  
14 prior to the end of the sixth month following the month in  
15 which the reacquisition occurs.

16 Sec. 39. Section 468.128, Code 2005, is amended to read as  
17 follows:

18 468.128 IMPOUNDING AREAS AND EROSION CONTROL DEVICES.  
19 Levee and drainage districts are empowered to construct  
20 impounding areas and other flood and erosion control devices  
21 to protect lands of the district and drainage structures and  
22 may provide ways for access to improvements for the operation  
23 or protection thereof, where the cost is not excessive in  
24 consideration of the value to the district. Necessary lands  
25 or easements may be acquired within or without the district by  
26 purchase, lease or agreement, or by exercise of the right of  
27 eminent domain as provided for in chapter 6B and may be  
28 procured and construction undertaken either independently or  
29 in co-operation with other districts, individuals, or any  
30 federal or state agency or political subdivision.

31 Sec. 40. Section 468.146, subsection 1, Code 2005, is  
32 amended to read as follows:

33 1. When a drainage district is established and a  
34 satisfactory outlet cannot be obtained except through lands in  
35 an adjoining county, or when an improved outlet cannot be

1 obtained except through lands downstream from the district  
2 boundary, the board shall have the power to purchase a right  
3 of way, to construct and maintain such outlets, and to pay all  
4 necessary costs and expenses out of the district funds. The  
5 board shall have similar authority relative to the  
6 construction and maintenance of silt basins upstream from the  
7 district boundary. In case the board and the owners of the  
8 land required for such outlet or silt basin cannot agree upon  
9 the price to be paid as compensation for the land taken or  
10 used, the board is hereby empowered to exercise the right of  
11 eminent domain as provided for in chapter 6B in order to  
12 procure such necessary right of way.

13 Sec. 41. Section 468.366, Code 2005, is amended to read as  
14 follows:

15 468.366 SETTLING BASIN -- CONDEMNATION.

16 If, before a district operating a pumping plant is  
17 completed and accepted, it appears that portions of the lands  
18 within said district are wet or nonproductive by reason of the  
19 floods or overflow waters from one or more streams running  
20 into, through, or along said district and that said district  
21 or some other district of which such district shall have  
22 formed a part, shall have provided a settling basin to care  
23 for the said floods and overflow waters of said stream or  
24 watercourse, but no channel to said settling basin has been  
25 provided, said board or boards are hereby empowered to lease,  
26 buy, or condemn the necessary lands within or without the  
27 district for such channel. Proceedings to condemn shall be as  
28 provided in chapter 6B for the exercise of the right of  
29 eminent domain.

30 Sec. 42. CODE EDITOR DIRECTIVE.

31 1. The Code editor is directed to make the following  
32 transfers:

- 33 a. Section 6B.10 to become subsection 2 of section 6B.9.
- 34 b. Section 6B.20 to become subsection 4 of section 6B.18.
- 35 c. Section 6B.27 to become subsection 2 of section 6B.26.

1 d. Sections 6B.39 and 6B.41 to become subsections 3 and 4,  
2 respectively, of section 6B.38.

3 e. Section 6B.43 to become unnumbered paragraph 3 of  
4 section 6B.4.

5 f. Sections 6B.47 through 6B.51 to become subsections 2  
6 through 6, respectively, of section 6B.46.

7 g. Section 6B.58 to become subsection 2 of section 6B.1.

8 2. The Code editor is directed to correct internal  
9 references in the Code as necessary due to enactment of this  
10 section.

11 Sec. 43. Section 6B.4A, Code 2005, is repealed.

12 Sec. 44. EFFECTIVE AND APPLICABILITY DATES.

13 1. The section of this Act enacting section 422.73,  
14 subsection 3, being deemed of immediate importance, takes  
15 effect upon enactment and applies to reacquisitions of  
16 property occurring on or after the effective date of this Act.

17 2. The remainder of this Act, being deemed of immediate  
18 importance, takes effect upon enactment and applies to  
19 condemnation actions initiated on or after the effective date  
20 of this Act.

21 EXPLANATION

22 This bill makes changes to the law relating to government  
23 authority, including eminent domain authority and the  
24 procedure by which eminent domain authority is exercised  
25 (condemnation), essential county purposes, and other properly  
26 related matters.

27 The bill changes from 40 feet to 66 feet the width of a  
28 public way that may be acquired by eminent domain by an owner  
29 of land without a way to the land, except that the greater  
30 width does not apply to agricultural land or land with single  
31 family residences.

32 The bill provides limitations on the exercise of eminent  
33 domain authority for all private property by defining "public  
34 use", "public purpose", and "public improvement" to mean use  
35 of property by the general public; governmental entities;

1 public or private utilities, common carriers, or airports or  
2 airport systems. "Public use", "public purpose", and "public  
3 improvement" are also defined in the bill to include the  
4 acquisition of property in those portions of urban renewal  
5 areas designated as slum or blighted if the parcel to be  
6 condemned is in a slum or blighted condition, acquisition of  
7 brownfield sites, and private use of property that is  
8 incidental to its public use. The bill further provides that  
9 "public use", "public purpose", and "public improvement" do  
10 not mean economic development activities or privately funded  
11 activities unless such activities are specifically included in  
12 the definition of these terms. The bill also provides that  
13 private property shall not be condemned for creation of a  
14 lake, construction of a landfill, or construction of sewer  
15 treatment facilities unless the acquiring agency demonstrates  
16 that no other prudent and feasible alternative exists to  
17 accomplish its purpose. The bill also provides that private  
18 property shall not be condemned for a park or recreational  
19 facility unless a good faith effort has been made to purchase  
20 a prudent and feasible location from a willing seller.

21 The bill provides that, in an action contesting  
22 condemnation of property, the burden of proof is on the  
23 acquiring agency to demonstrate by clear and convincing  
24 evidence that the proposed use of the property meets the  
25 definition of "public use", "public purpose", and "public  
26 improvement" and that there is no prudent and feasible  
27 alternative to condemnation of the property.

28 The bill amends Code section 6B.2A to extend the current  
29 notice requirements for condemnation of agricultural land to  
30 condemnation of all private property and requires the  
31 acquiring agency to post the notice in a conspicuous place on  
32 the property. The bill provides that these notice  
33 requirements apply to the department of transportation only  
34 when the land being condemned by or on behalf of the  
35 department is agricultural land.

1 The bill strikes the exception for condemnation of  
2 agricultural land for industry and, correspondingly, repeals  
3 Code section 6B.4A that gave a compensation commission the  
4 authority to review an application by a city or county for  
5 condemnation of agricultural land for industry.

6 The bill provides that when engaging in negotiations with a  
7 landowner, the acquiring agency shall offer a price for the  
8 property that is not less than the acquiring agency's  
9 appraisal or that is not less than the value determined under  
10 the acquiring agency's appraisal waiver procedure for property  
11 with a low fair market value plus such expenses. Code section  
12 6B.54 currently allows an acquiring agency to establish an  
13 appraisal waiver procedure for property with a low fair market  
14 value. The bill also requires the purchase offer to contain a  
15 provision for payment of all expenses payable to a condemnee.  
16 The bill provides that, in the alternative, an acquiring  
17 agency may offer an amount equal to 125 percent of the  
18 appraised value plus the amount of certain specified expenses.  
19 If the owner accepts this offer, the owner is barred from  
20 claiming payment from the acquiring agency for any other  
21 expenses allowed by law. The bill contains a similar  
22 provision in situations where the property is acquired through  
23 condemnation and the damages have been finally determined and  
24 paid.

25 The bill requires the acquiring agency to post a copy of  
26 the application for condemnation in a conspicuous place on the  
27 property during the same time period in which the application  
28 is to be published.

29 The bill provides that a challenge to the exercise of  
30 eminent domain authority or to the condemnation proceedings  
31 may be brought by the owner of the property during the same  
32 30-day time period that the owner may file the notice of  
33 appeal of appraisal of the damages determined by the  
34 compensation commission.

35 The bill provides that a compensation commission shall

1 deliberate in open session.

2 The bill amends Code sections 6B.14 and 6B.45 to provide  
3 that when the compensation commission or the acquiring agency,  
4 respectively, are determining the fair market value of the  
5 property, neither may consider the assessed value of property  
6 that has been platted and is being developed but, by statute,  
7 retains its assessment as undeveloped property.

8 The bill specifies that payments for relocating persons  
9 displaced by condemnation, including expenses incurred in  
10 moving the person's family, business, or farm operation, shall  
11 be paid for any condemnation that displaces a person, not just  
12 those that are for projects or programs receiving federal  
13 financial assistance. For all condemnations, including those  
14 receiving federal financial assistance, the bill provides that  
15 if relocation of a business or farm operation is not  
16 economically feasible, the displaced person may also apply for  
17 payment of the loss of existing business relationships because  
18 of the inability to relocate the business or farm operation to  
19 a location similar in economic advantage to the location from  
20 which the business or farm operation was moved.

21 The bill specifies that Code sections 6B.54 and 6B.55,  
22 relating to requirements imposed on acquiring agencies, apply  
23 to condemnations for a public use, public purpose, or public  
24 improvement. The section is also amended to add reasonable  
25 attorney fees and reasonable costs, including expert witness  
26 fees and fees related to appraisals, to the list of expenses  
27 reimbursable by an acquiring agency to a property owner.

28 Current law provides that property obtained by condemnation  
29 that is later sold by the acquiring agency must be offered for  
30 sale first to the previous owner at a price equal to the  
31 current appraised value. The bill provides that it must be  
32 offered for sale to the previous owner at the current  
33 appraised value or the fair market value at the time it was  
34 acquired by the acquiring agency from the prior owner,  
35 whichever is less.

1 The bill allows a previous owner to reclaim title to  
2 property acquired by condemnation if, after five years from  
3 the date of acquisition, the property has not been used for  
4 the purpose stated in the condemnation application and the  
5 acquiring agency has not taken action to dispose of the  
6 property. The bill provides that this provision does not  
7 apply to the state department of transportation.

8 The bill provides that rent shall not be charged and shall  
9 not accrue until the damages for the property have been  
10 finally determined and paid and all court challenges related  
11 to the condemnation have been finally adjudicated.

12 The bill provides that any entity created by or on behalf  
13 of a political subdivision and that is conferred the authority  
14 to acquire property by condemnation shall not use its eminent  
15 domain authority unless the governing body of each such  
16 political subdivision has, by resolution, approved the use of  
17 eminent domain authority by the entity.

18 The bill makes changes to various provisions of the Code  
19 where eminent domain authority is extended to an entity other  
20 than those listed in Code chapter 6A to specify that those  
21 entities, when condemning property, are subject to the  
22 provisions of Code chapters 6A and 6B.

23 The bill amends the section of the Code that defines  
24 "essential county purpose" to remove the provision that allows  
25 for petition and election on a proposal by the board of  
26 supervisors to fund, by general obligation bonds, the  
27 acquisition, construction, improvement, repair, or equipping  
28 of facilities used for the storage, transportation, or  
29 utilization of water.

30 The bill also provides that the power of a city to acquire  
31 property outside the city does not include the power to  
32 acquire property outside the city by eminent domain with  
33 certain exceptions.

34 The bill provides that the authority to exercise the power  
35 of eminent domain under the urban renewal Code chapter and the

1 Code chapter authorizing municipal housing projects is subject  
2 to the limitations on eminent domain authority in Code chapter  
3 6A, "Eminent Domain Law (Condemnation)", and the general  
4 procedure for condemnation of property set out in Code chapter  
5 6B, "Procedure Under Eminent Domain". Also, relating to  
6 municipal housing projects, the bill provides that if a  
7 municipality proposes to take a part of a lot or parcel of  
8 real property, the municipality shall also take the remaining  
9 part of the lot or parcel if requested by the owner. The same  
10 requirement currently applies to condemnation of property for  
11 urban renewal purposes.

12 The bill allows a prior owner who reacquires property that  
13 had been condemned to amend the owner's tax return for the tax  
14 year that the owner claimed a gain on the involuntary  
15 conversion of the property to reflect the payment made to  
16 reacquire the property.

17 Finally, the bill directs the Code editor to make the  
18 following changes for organizational reasons and ease of  
19 reading:

20 1. The language of Code section 6B.10 is moved to Code  
21 section 6B.9.

22 2. The language of Code section 6B.20 is moved to Code  
23 section 6B.18.

24 3. The language of Code section 6B.27 is moved to Code  
25 section 6B.26.

26 4. The language of Code sections 6B.39 and 6B.41 are moved  
27 to Code section 6B.38.

28 5. The language of Code section 6B.43 is moved to Code  
29 section 6B.4.

30 6. The language of Code sections 6B.47 through 6B.51 is  
31 moved to Code section 6B.46.

32 7. The language of Code section 6B.58 is moved to Code  
33 section 6B.1.

34 The provision of the bill allowing a prior owner to amend a  
35 tax return upon reacquisition of the property takes effect

1 upon enactment and applies to reacquisitions of property  
2 occurring on or after that date. The remainder of the bill  
3 takes effect upon enactment and applies to condemnation  
4 actions initiated on or after the effective date of the bill.

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HOUSE FILE 2351

H-8020

1 Amend House File 2351 as follows:

2 1. Page 4, by striking lines 3 through 10, and  
3 inserting the following:

4 "c. Notwithstanding paragraph "a", private  
5 property shall not be condemned to develop or".

By DOLECHECK of Ringgold

H-8020 FILED FEBRUARY 14, 2006

HOUSE FILE 2351

H-8021

1 Amend House File 2351 as follows:

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

4 "Section 1. NEW SECTION. 6A.22 CONTESTING USE OF  
5 EMINENT DOMAIN AUTHORITY FOR CERTAIN ECONOMIC  
6 DEVELOPMENT ACTIVITIES -- BURDEN OF PROOF.

7 1. The exercise of eminent domain authority for a  
8 public use, public purpose, or public improvement  
9 includes condemnation of property, except agricultural  
10 property, for economic development activities  
11 resulting in increased tax revenues, increased  
12 employment opportunities, housing and residential  
13 development, or commercial or industrial development  
14 if such activities are part of a plan adopted by the  
15 governing body of a city or county after due  
16 deliberation and public input.

17 2. In any action contesting whether eminent domain  
18 authority is being exercised appropriately under this  
19 section, the burden of proof is on the city or county,  
20 as applicable, to prove by a preponderance of the  
21 evidence that the proposed use of the property is for  
22 an economic development activity as described in  
23 subsection 1, and that there is no prudent and  
24 feasible alternative to condemnation of the property."

25 2. Title page, by striking lines 1 through 4, and  
26 inserting the following: "An Act relating to the  
27 exercise of eminent domain authority for certain  
28 economic development activities."

29 3. By renumbering as necessary.

By TOMENGA of Polk  
R. OLSON of Polk

H-8021 FILED FEBRUARY 14, 2006

HOUSE FILE 2351

H-8023

1 Amend House File 2351 as follows:

2 1. Page 1, by inserting after line 25, the  
3 following:

4 "Sec. \_\_\_\_\_. Section 6A.21, subsection 1, paragraph  
5 b, Code 2005, is amended to read as follows:

6 b. "Private development purposes" means the  
7 construction of, or improvement related to,  
8 recreational trails in counties with less than three  
9 hundred thousand population, recreational development  
10 paid for primarily with private funds, housing and  
11 residential development, or commercial or industrial  
12 enterprise development."

13 2. By renumbering as necessary.

By FALLON of Polk

H-8023 FILED FEBRUARY 14, 2006

HOUSE FILE 2351

H-8024

1 Amend House File 2351 as follows:

2 1. Page 19, by inserting after line 8, the  
3 following:

4 "Sec. \_\_\_\_\_. Section 330A.13, Code 2005, is amended  
5 to read as follows:

6 330A.13 ACQUISITION OF LANDS AND PROPERTY.

7 An authority shall have the power to acquire,  
8 within or without the geographical boundaries of the  
9 member municipalities, by purchase or eminent domain  
10 proceedings, either the fees or such rights, title,  
11 interest, or easement in such lands and property,  
12 including but not limited to air rights and avigation  
13 easements, as the authority may deem necessary for any  
14 of the purposes of this chapter. However, the  
15 authority shall not acquire property for construction  
16 of an airport if the property is located in the  
17 unincorporated area of a county. The right of eminent  
18 domain herein conferred shall be exercised by the  
19 authority in the manner provided by law, as though the  
20 authority were a municipal corporation."

21 2. By renumbering as necessary.

By FALLON of Polk

H-8024 FILED FEBRUARY 14, 2006

HOUSE FILE 2351

H-8025

1 Amend House File 2351 as follows:

2 1. Page 1, by striking lines 29 through 32, and  
3 inserting the following: "purpose, or public  
4 improvement does not apply to a ~~slum area or blighted~~  
5 ~~area as defined in section 403.17, or to agricultural~~  
6 ~~land acquired for industry as that term is defined in~~  
7 ~~section 260E.2, or to the".~~

8 2. Page 3, by inserting after line 28, the  
9 following:

10 "For purposes of this subparagraph (5), in no case  
11 shall land that is agricultural land be determined to  
12 be in a slum condition or blighted condition."

13 3. Page 9, line 25, by inserting after the word  
14 "session." the following: "However, if the acquiring  
15 agency is the state department of transportation, the  
16 commission shall deliberate in closed session."

17 4. Page 10, by inserting after line 9, the  
18 following:

19 "Sec. \_\_\_\_ . NEW SECTION. 6B.28 ACQUISITION OF  
20 CERTAIN PROPERTY BY PRIOR OWNER.

21 If real property condemned pursuant to this chapter  
22 is located adjacent to real property owned by any  
23 political subdivision or by any quasi-governmental  
24 entity and held for development purposes, the  
25 governing body of the political subdivision or quasi-  
26 governmental entity shall offer the property for sale  
27 to the prior owner of the condemned property. The  
28 offer shall be made as soon as possible after damages  
29 have been finally determined and paid to the  
30 condemnee. If the political subdivision or quasi-  
31 governmental entity refuses to offer the property for  
32 sale to the prior owner of the condemned property,  
33 such prior owner may take action in the district court  
34 of the county where the real property is located to  
35 force the sale of the property."

36 5. By striking page 10, line 10 through page 11,  
37 line 4, and inserting the following:

38 "Sec. \_\_\_\_ . Section 6B.42, subsection 1, paragraph  
39 a, Code 2005, is amended to read as follows:

40 a. The acquiring agency shall provide to the  
41 person, in addition to any other sums of money in  
42 payment of just compensation, the payments and  
43 assistance required by law, in accordance with chapter  
44 316, as if the acquiring agency were a displacing  
45 agency under that chapter."

46 6. Page 15, by striking lines 9 through 11.

47 7. By striking page 19, line 9 through page 20,  
48 line 17.

49 8. Title page, lines 2 and 3, by striking the  
50 words "essential county purposes,".

H-8025

H-8025

Page 2

1 9. By renumbering as necessary.

By KAUFMANN of Cedar

H-8025 FILED FEBRUARY 14, 2006

HOUSE FILE 2351

H-8026

1 Amend House File 2351 as follows:

2 1. Page 26, by inserting after line 2, the  
3 following:

4 "Sec. \_\_\_\_ . Section 422.7, Code Supplement 2005, is  
5 amended by adding the following new subsection:

6 NEW SUBSECTION. 45. Subtract, to the extent  
7 included, the amount of gain realized by the taxpayer  
8 as a result of the involuntary conversion of property  
9 due to eminent domain or the threat of eminent domain.  
10 However, if the total amount of such realized gain is  
11 not recognized because the converted property is  
12 replaced with property that is similar to, or related  
13 in use to, the converted property, the amount of such  
14 realized gain shall not be subtracted under this  
15 subsection until the remaining realized gain is  
16 subject to federal taxation or until the time of  
17 disposition of the replacement property as provided  
18 under rules of the director. The subtraction allowed  
19 under this subsection shall not alter the basis as  
20 established for federal tax purposes of any property  
21 owned by the taxpayer.

22 Sec. \_\_\_\_ . Section 422.35, Code Supplement 2005, is  
23 amended by adding the following new subsection:

24 NEW SUBSECTION. 22. Subtract, to the extent  
25 included, the amount of gain realized by the taxpayer  
26 as a result of the involuntary conversion of property  
27 due to eminent domain or the threat of eminent domain.  
28 However, if the total amount of such realized gain is  
29 not recognized because the converted property is  
30 replaced with property that is similar to, or related  
31 in use to, the converted property, the amount of such  
32 realized gain shall not be subtracted under this  
33 subsection until the remaining realized gain is  
34 subject to federal taxation or until the time of  
35 disposition of the replacement property as provided  
36 under rules of the director. The subtraction allowed  
37 under this subsection shall not alter the basis as  
38 established for federal tax purposes of any property  
39 owned by the taxpayer."

40 2. Page 28, by inserting after line 16, the  
41 following:

42 " \_\_\_\_ . The sections of this Act enacting section  
43 422.7, subsection 45, and section 422.35, subsection  
44 22, apply retroactively to January 1, 2006, for tax  
45 years beginning on or after that date."

46 3. By renumbering as necessary.

By DAVITT of Warren

H-8026 FILED FEBRUARY 14, 2006

HOUSE FILE 2351

H-8027

1 Amend House File 2351 as follows:

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

4 "Section 1. NEW SECTION. 6A.22 CONDEMNATION OF  
5 CERTAIN RESIDENTIAL PROPERTY -- DEFINITIONS.

6 1. As used in this chapter and chapter 6B, unless  
7 the context otherwise requires:

8 a. "Private development purposes" means the  
9 construction of, or improvement related to,  
10 recreational development paid for primarily with  
11 private funds, housing and residential development, or  
12 commercial or industrial enterprise development.

13 b. "Public use", "public purpose", or "public  
14 improvement" does not include the authority to condemn  
15 residential property for private development purposes  
16 unless the owner of the residential property consents  
17 to the condemnation.

18 c. "Residential property" means real property  
19 which is an owner-occupied single-family dwelling or  
20 an owner-occupied dwelling containing no more than two  
21 single-family dwelling units, and structures  
22 incidental or appurtenant to the dwelling.  
23 Residential property does not include any real  
24 property declared to be a horizontal property regime  
25 under chapter 499B.

26 2. The limitation in subsection 1 on the  
27 definition of public use, public purpose, or public  
28 improvement does not apply to a slum area or blighted  
29 area as defined in section 403.17, or to property  
30 necessary for a municipal housing project under  
31 chapter 403A, or to the establishment, relocation, or  
32 improvement of a road pursuant to chapter 306, or to  
33 the establishment of a railway under the supervision  
34 of the department of transportation as provided in  
35 section 327C.2, or to an airport as defined in section  
36 328.1, or to land acquired in order to replace or  
37 mitigate land used in a road project when federal law  
38 requires replacement or mitigation. This limitation  
39 also does not apply to utilities or persons under the  
40 jurisdiction of the Iowa utilities board in the  
41 department of commerce or to any other utility  
42 conferred the right by statute to condemn private  
43 property or to otherwise exercise the power of eminent  
44 domain.

45 Sec. 2. Section 403.7, Code 2005, is amended to  
46 read as follows:

47 403.7 CONDEMNATION OF PROPERTY.

48 A municipality shall have the right to acquire by  
49 condemnation any interest in real property, including  
50 a fee simple title thereto, which it may deem

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1 necessary for or in connection with an urban renewal  
2 project under this chapter, subject to the limitations  
3 on eminent domain authority in chapter 6A. However, a  
4 municipality shall not condemn agricultural land  
5 included within an economic development area unless  
6 the owner of the agricultural land consents to  
7 condemnation or unless the agricultural land is to be  
8 acquired for industry as that term is defined in  
9 section 260E.2. A municipality ~~may~~ shall exercise the  
10 power of eminent domain in the manner provided in  
11 chapter 6B, ~~and Acts amendatory to that chapter or~~  
12 ~~supplementary to that chapter, or it may exercise the~~  
13 ~~power of eminent domain in the manner now or which may~~  
14 ~~be hereafter provided by any other statutory~~  
15 ~~provisions for the exercise of the power of eminent~~  
16 ~~domain.~~ Property already devoted to a public use may  
17 be acquired in like manner. However, real property  
18 belonging to the state, or any political subdivision  
19 of this state, shall not be acquired without its  
20 consent, and real property or any right or interest in  
21 the property owned by any public utility company,  
22 pipeline company, railway or transportation company  
23 vested with the right of eminent domain under the laws  
24 of this state, shall not be acquired without the  
25 consent of the company, or without first securing,  
26 after due notice to the company and after hearing, a  
27 certificate authorizing condemnation of the property  
28 from the board, commission or body having the  
29 authority to grant a certificate authorizing  
30 condemnation. In a condemnation proceeding, if a  
31 municipality proposes to take a part of a lot or  
32 parcel of real property, the municipality shall also  
33 take the remaining part of the lot or parcel if  
34 requested by the owner.

35 Sec. 3. Section 403A.20, Code 2005, is amended to  
36 read as follows:

37 403A.20 CONDEMNATION OF PROPERTY.

38 A municipality shall have the right to acquire by  
39 condemnation any interest in real property, including  
40 a fee simple title thereto, which it may deem  
41 necessary for or in connection with a municipal  
42 housing project under this chapter. A municipality  
43 ~~may~~ shall exercise the power of eminent domain in the  
44 manner provided in chapter 6B, ~~and acts amendatory~~  
45 ~~thereof or supplementary thereto, or it may exercise~~  
46 ~~the power of eminent domain in the manner now or which~~  
47 ~~may be hereafter provided by any other statutory~~  
48 ~~provisions for the exercise of the power of eminent~~  
49 ~~domain.~~ Property already devoted to a public use may  
50 be acquired in like manner: ~~Provided, that no.~~ \_\_\_\_\_

1 However, real property belonging to the state, or any  
2 political subdivision thereof, ~~may~~ shall not be  
3 acquired without its consent, ~~provided further that no~~  
4 and real property or any right or interest therein in  
5 the property owned by any public utility company,  
6 pipeline company, railway or transportation company  
7 vested with the right of eminent domain under the laws  
8 of this state, shall not be acquired without the  
9 consent of ~~such~~ the company, or without first  
10 securing, after due notice to ~~such~~ the company and  
11 after hearing, a certificate authorizing condemnation  
12 of such property from the board, commission or body  
13 having the authority to grant a certificate  
14 authorizing condemnation.

15 In a condemnation proceeding, if a municipality  
16 proposes to take a part of a lot or parcel of real  
17 property, the municipality shall also take the  
18 remaining part of the lot or parcel if requested by  
19 the owner."

20 2. Title page, by striking lines 1 through 4, and  
21 inserting the following: "An Act limiting the  
22 exercise of eminent domain authority over certain  
23 residential property."

By HEDDENS of Story

**HOUSE FILE 2351**

**H-8028**

- 1 Amend House File 2351 as follows:  
2 1. Page 2, by striking lines 29 through 33, and  
3 inserting the following:  
4 "(5) The acquisition of a census tract, as  
5 determined in the most recent federal census, or a  
6 portion of a census tract, if the tract or portion  
7 thereof is located in that part of an urban renewal  
8 area designated as a slum or blighted area and if the  
9 tract or a portion thereof is determined by the  
10 municipality to be in a predominantly slum or blighted  
11 condition."  
12 2. Page 4, by striking lines 6 and 7, and  
13 inserting the following: "source or for recreational  
14 use".  
15 3. By striking page 9, line 18, through page 10,  
16 line 2.  
17 4. By striking page 20, line 25, through page 21,  
18 line 2.  
19 5. By renumbering as necessary.

**By** JENKINS of Black Hawk  
HOFFMAN of Crawford

**H-8028** FILED FEBRUARY 15, 2006  
OUT OF ORDER

**HOUSE FILE 2351**

**H-8031**

- 1 Amend the amendment, H-8025, to House File 2351 as  
2 follows:  
3 1. Page 1, by inserting after line 7, the  
4 following:  
5 "\_\_\_\_\_. By striking page 2, line 29, through page  
6 3, line 28."  
7 2. By renumbering as necessary.

**By** PAULSEN of Linn

**H-8031** FILED FEBRUARY 15, 2006  
WITHDRAWN

HOUSE FILE 2351

H-8032

1 Amend the amendment, H-8025, to House File 2351 as  
2 follows:  
3 1. Page 1, by inserting after line 12 the  
4 following:  
5 "\_\_\_\_. Page 4, lines 6 and 7, by striking the  
6 words "for construction of a landfill,".  
7 \_\_\_\_\_. Page 4, by inserting before line 15, the  
8 following:  
9 "(3) Private property shall not be condemned for  
10 construction of a landfill unless the property to be  
11 condemned is located immediately adjacent to an  
12 existing landfill.""

By GRANZOW of Hardin

H-8032 FILED FEBRUARY 15, 2006

ADOPTED

HOUSE FILE 2351

H-8033

1 Amend the amendment, H-8025, to House File 2351 as  
2 follows:  
3 1. Page 1, by inserting before line 47, the  
4 following:  
5 "\_\_\_\_. Page 17, by inserting after line 26, the  
6 following:  
7 "This section does not apply to a person issued a  
8 certificate of public convenience, use, and necessity  
9 under chapter 476A.""  
10 2. By renumbering as necessary.

By WILDERDYKE of Harrison

ALONS of Sioux

MAY of Dickinson

CHAMBERS of O'Brien

H-8033 FILED FEBRUARY 15, 2006

ADOPTED

HOUSE FILE 2351

H-8034

1 Amend the amendment, H-8025, to House File 2351 as  
2 follows:  
3 1. Page 1, by inserting before line 47 the  
4 following:  
5 "\_\_\_\_. Page 17, line 26, by inserting after the  
6 word "body." the following: "The approval requirement  
7 of this section applies only to the governing bodies  
8 of political subdivisions located in this state.""  
9 2. By renumbering as necessary.

By ALONS of Sioux

CHAMBERS of O'Brien

WILDERDYKE of Harrison

KAUFMANN of Cedar

H-8034 FILED FEBRUARY 15, 2006

WITHDRAWN

**HOUSE FILE 2351**

**H-8035**

1 Amend the amendment, H-8025, to House File 2351 as  
2 follows:

- 3 1. Page 1, line 16, by striking the word "shall"
- 4 and inserting the following: "may".
- 5 2. Page 1, by striking line 46.

**By** KAUFMANN of Cedar

**H-8035** FILED FEBRUARY 15, 2006

ADOPTED

**HOUSE FILE 2351**

**H-8036**

1 Amend the amendment, H-8026, to House File 2351, as  
2 follows:

- 3 1. Page 1, line 7, by inserting after the words
- 4 "amount of" the following: "ordinary or capital".
- 5 2. Page 1, line 10, by inserting after the word
- 6 "realized" the following: "ordinary or capital".
- 7 3. Page 1, line 14, by inserting after the word
- 8 "realized" the following: "ordinary or capital".
- 9 4. Page 1, line 15, by inserting after the word
- 10 "realized" the following: "ordinary or capital".
- 11 5. Page 1, line 25, by inserting after the words
- 12 "amount of" the following: "ordinary or capital".
- 13 6. Page 1, line 28, by inserting after the word
- 14 "realized" the following: "ordinary or capital".
- 15 7. Page 1, line 32, by inserting after the word
- 16 "realized" the following: "ordinary or capital".
- 17 8. Page 1, line 33, by inserting after the word
- 18 "realized" the following: "ordinary or capital".

**By** ANDERSON of Page

**H-8036** FILED FEBRUARY 15, 2006

ADOPTED

**HOUSE FILE 2351**

**H-8037**

1 Amend the amendment, H-8025, to House File 2351 as  
2 follows:

- 3 1. Page 1, by inserting after line 48 the
- 4 following:
- 5 "    . Page 21, by inserting after line 2 the
- 6 following:
- 7 "d. The operation of a municipal airport."
- 8 2. By renumbering as necessary.

**By** HUSER of Polk

**H-8037** FILED FEBRUARY 15, 2006

ADOPTED

HOUSE FILE 2351

H-8038

1 Amend the amendment, H-8025, to House File 2351 as  
2 follows:

3 1. Page 1, by inserting before line 8, the  
4 following:

5 "\_\_\_\_. Page 2, line 33, by inserting after the  
6 word "condition." the following: "However, for a  
7 project or acquisition plan adopted by the governing  
8 body of a city or county after due deliberation and  
9 public input, if seventy-five percent or more of the  
10 assessed value of the property included in the plan  
11 consists of property that is determined to be in a  
12 slum or blighted condition at the time the plan was  
13 established, the entire project or acquisition plan  
14 area is subject to condemnation by the municipality.""

By JENKINS of Black Hawk

H-8038 FILED FEBRUARY 15, 2006

ADOPTED

HOUSE FILE 2351

H-8039

1 Amend the amendment, H-8025, to House File 2351, as  
2 follows:

3 1. Page 1, by inserting after line 12, the  
4 following:

5 "\_\_\_\_. Page 3, line 35, by inserting after the  
6 word "development" the following: "or".

7 \_\_\_\_\_. Page 4, by striking lines 1 and 2, and  
8 inserting the following: "owned property to a private  
9 party.""

By JENKINS of Black Hawk

H-8039 FILED FEBRUARY 15, 2006

ADOPTED

HOUSE FILE 2351

H-8040

1 Amend the amendment, H-8025, to House File 2351, as  
2 follows:

3 1. Page 1, by striking lines 17 through 35.

By STRUYK of Pottawattamie

H-8040 FILED FEBRUARY 15, 2006

ADOPTED

HOUSE FILE 2351

H-8042

1 Amend the amendment, H-8025, to House File 2351 as  
2 follows:

3 1. By striking page 1, line 2, through page 2,  
4 line 1, and inserting the following:

5 "\_\_\_\_. By striking everything after the enacting  
6 clause and inserting the following:

7 "Section 1. MORATORIUM ON CERTAIN EXERCISE OF  
8 EMINENT DOMAIN AUTHORITY -- TASK FORCE CREATED.

9 1. A moratorium on the exercise of eminent domain  
10 authority by cities, counties, and local government  
11 entities conferred eminent domain authority by statute  
12 is imposed. The moratorium shall be in effect until  
13 December 31, 2006. During the moratorium no  
14 applications for condemnation shall be filed pursuant  
15 to section 6B.3. However, the moratorium shall not  
16 apply to a condemnation of property by a county for  
17 right-of-way that is contiguous to an existing road  
18 right-of-way and necessary for the maintenance, safety  
19 improvement, repair, or upgrade of the existing road.  
20 For purposes of this subsection, "upgrade" means to  
21 bring a road or bridge up to currently acceptable  
22 standards, including improved geometrics, passing  
23 lanes, turning lanes, climbing lanes, and improved  
24 shoulders. "Upgrade" does not include expanding a  
25 highway from two lanes to four lanes.

26 2. An eminent domain task force is created.  
27 Members of the task force shall be appointed by the  
28 senate democratic floor leader, the senate republican  
29 floor leader, the speaker of the house of  
30 representatives, and the minority leader of the house  
31 of representatives. The members shall include the  
32 following:

33 a. Two representatives of the Iowa state  
34 association of counties. One representative shall be  
35 from a county with a population of less than one  
36 hundred thousand and one representative shall be from  
37 a county with a population of one hundred thousand or  
38 more.

39 b. Two representatives of the Iowa league of  
40 cities. One representative shall be from a city with  
41 a population of less than one hundred thousand and one  
42 representative shall be from a city with a population  
43 of one hundred thousand or more.

44 c. Three land use experts, one each from the three  
45 regents universities.

46 3. The task force shall study and collect data on  
47 the following:

48 a. The history of the use of eminent domain by  
49 cities and counties in Iowa.

50 b. The current law in Iowa and other states

H-8042

**H-8042**

Page 2

1 relating to the use of eminent domain by cities and  
2 counties.

3 c. The use of eminent domain in Iowa by local  
4 government entities conferred eminent domain authority  
5 by statute.

6 d. Any other issues the task force deems  
7 appropriate.

8 4. The task force shall report to the general  
9 assembly by January 8, 2007. The report shall include  
10 a summary of the issues studied and the data  
11 collected. The report shall include recommendations  
12 for statutory changes related to the use of eminent  
13 domain by cities, counties, and local government  
14 entities conferred eminent domain authority by  
15 statute. The recommendations may include an extension  
16 of the moratorium imposed in subsection 1.

17 Sec. 2. EFFECTIVE DATE. This Act, being deemed of  
18 immediate importance, takes effect upon enactment."

19 \_\_\_\_\_. Title page, by striking lines 1 through 4,  
20 and inserting the following: "An Act imposing a  
21 moratorium on the exercise of eminent domain authority  
22 and creating an eminent domain task force and  
23 including an effective date provision."

24 \_\_\_\_\_. By renumbering as necessary. "

By SHOULTZ of Black Hawk  
R. OLSON of Polk

**H-8042** FILED FEBRUARY 15, 2006

LOST

**HOUSE FILE 2351**

**H-8041**

1 Amend the amendment, H-8025, to House File 2351 as  
2 follows:

3 1. Page 1, by inserting after line 48, the  
4 following:

5 "\_\_\_\_\_. Page 20, line 31, by inserting after the  
6 word "following" the following: "", but only to the  
7 extent the city had this power prior to July 1,  
8 2006."

By WATTS of Dallas

**H-8041** FILED FEBRUARY 15, 2006

ADOPTED

HOUSE FILE 2351

H-8043

1 Amend the amendment, H-8025, to House File 2351 as  
2 follows:  
3 1. Page 1, by inserting after line 12, the  
4 following:  
5 "\_\_\_\_\_. Page 4, by inserting before line 15, the  
6 following:  
7 "(3) The use of eminent domain authority to  
8 acquire private property in the unincorporated area of  
9 a county for use as an airport, airport system, or  
10 aviation facilities is prohibited, notwithstanding any  
11 provision of the law to the contrary, if the property  
12 to be condemned is located outside the geographic  
13 boundaries of the city or county operating the  
14 airport, airport system, or aviation facilities or  
15 outside the geographic boundaries of the member  
16 municipalities of the commission or authority.  
17 However, an acquiring agency may proceed with  
18 condemnation of property under these circumstances if  
19 the board of supervisors of the county where the  
20 property for which condemnation is sought is located  
21 holds a public hearing on the matter and subsequent to  
22 the hearing approves, by resolution, the condemnation  
23 action.""

By VAN ENGELENHOVEN of Marion  
ARNOLD of Lucas

H-8043 FILED FEBRUARY 15, 2006  
ADOPTED

HOUSE FILE 2351

H-8044

1 Amend House File 2351 as follows:  
2 1. Page 20, line 31, by inserting after the word  
3 "following" the following: " , but only to the extent  
4 the city had this power prior to July 1, 2006".

By WATTS of Dallas

H-8044 FILED FEBRUARY 15, 2006  
OUT OF ORDER

HOUSE FILE 2351

H-8045

1 Amend the amendment, H-8025, to House File 2351 as  
2 follows:  
3 1. Page 1, by inserting before line 47, the  
4 following:  
5 "\_\_\_\_\_. Page 17, line 26, by inserting after the  
6 word "body." the following: "This section does not  
7 apply to an entity created by or on behalf of  
8 political subdivisions located in more than one  
9 state.""

By ALONS of Sioux

H-8045 FILED FEBRUARY 15, 2006  
WITHDRAWN

HOUSE FILE 2351

H-8046

1 Amend the amendment, H-8025, to House File 2351 as  
2 follows:

3 1. Page 1, by inserting before line 47, the  
4 following:

5 "\_\_\_\_. Page 17, by inserting before line 27, the  
6 following:

7 "Sec. \_\_\_\_ . NEW SECTION. 6B.62 PROPERTY TAXES ON  
8 CERTAIN REPLACEMENT PROPERTY.

9 Notwithstanding any other provision to the  
10 contrary, for ten fiscal years following condemnation,  
11 property taxes on replacement property acquired by a  
12 prior owner within the same county where the condemned  
13 property is located shall not exceed the lesser of the  
14 amount of property taxes levied against the condemned  
15 property during the fiscal year in which the property  
16 was acquired by the acquiring agency or the amount of  
17 property taxes levied against the replacement property  
18 for the current fiscal year.""

19 2. By renumbering as necessary.

By WHITEAD of Woodbury

H-8046 FILED FEBRUARY 15, 2006

ADOPTED

HOUSE FILE 2351

H-8047

1 Amend the amendment, H-8026, to House File 2351 as  
2 follows:

3 1. Page 1, line 9, by striking the words "or the  
4 threat of eminent domain".

5 2. Page 1, line 27, by striking the words "or the  
6 threat of eminent domain".

By HUSER of Polk

DAVITT of Warren

H-8047 FILED FEBRUARY 15, 2006

ADOPTED

HOUSE FILE 2351

H-8048

1 Amend the amendment, H-8026, to House File 2351 as  
2 follows:

3 1. Page 1, by inserting before line 2, the  
4 following:

5 "\_\_\_\_. Page 17, line 26, by inserting after the  
6 word "body." the following: "This section does not  
7 apply to a multistate entity created to provide  
8 drinking water which has received or is receiving  
9 federal funds.""

10 2. By renumbering as necessary.

By ALONS of Sioux

H-8048 FILED FEBRUARY 15, 2006

ADOPTED

HOUSE FILE 2351

H-8049

1 Amend the amendment, H-8026, to House File 2351 as  
2 follows:

3 1. Page 1, by inserting before line 2, the  
4 following:

5 "\_\_\_\_. By striking page 9, line 18 through page  
6 10, line 2."

7 2. Page 1, by inserting before line 2, the  
8 following:

9 "\_\_\_\_. Page 12, by inserting after line 5, the  
10 following:

11 "Only the appraisal prepared under this section  
12 shall be forwarded to the compensation commission by  
13 the acquiring agency."

14 3. Page 1, by inserting before line 2, the  
15 following:

16 "\_\_\_\_. Page 13, line 32, by inserting after the  
17 word "dwelling" the following: "without at least one  
18 hundred eighty days' written notice."

19 4. Page 1, by inserting before line 2, the  
20 following:

21 "\_\_\_\_. Page 13, line 33, by striking the word  
22 "ninety" and inserting the following: "ninety three  
23 hundred sixty-five."

24 5. Page 1, by inserting before line 2, the  
25 following:

26 "\_\_\_\_. Page 15, by striking lines 9 through 11."

27 6. By renumbering as necessary.

By HUSER of Polk

H-8049 FILED FEBRUARY 15, 2006

A:W/D B:ADOPTED

HOUSE FILE 2351  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HF 2120)

(As Amended and Passed by the House February 15, 2006)

Re- Passed House, Date 5-3-06 Passed Senate, Date 4-12-06  
Vote: Ayes 89 Nays 5 Vote: Ayes 43 Nays 6  
Approved \_\_\_\_\_

A BILL FOR

1 An Act relating to government authority, including eminent domain  
\*2 authority and condemnation procedures, and other properly  
3 related matters, and including effective and applicability  
4 provisions.

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

6  
7 Deleted Language \*  
8 House Amendments \_\_\_\_\_

9 [ ]  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21

1 Section 1. Section 6A.4, subsection 2, unnumbered  
2 paragraph 1, Code 2005, is amended to read as follows:

3 Upon the owner or lessee of lands, which have no public or  
4 private way to the lands, for the purpose of providing a  
5 public way, ~~not exceeding forty feet in width~~, which will  
6 connect with an existing public road. The condemned public  
7 way shall not exceed forty feet in width when such lands are  
8 agricultural or have a single residence located on them. For  
9 all other uses, the condemned public way shall not exceed  
10 sixty-six feet. The condemned public way shall be located on  
11 a division, subdivision or "forty" line, or immediately  
12 adjacent thereto, and along the line which is the nearest  
13 feasible route to an existing public road, or along a route  
14 established for a period of ten years or more by an easement  
15 of record or by use and travel to and from the property by the  
16 owner and the general public. The public way shall not  
17 interfere with buildings, orchards, or cemeteries. When  
18 passing through enclosed lands, the public way shall be fenced  
19 on both sides by the condemner upon request of the owner of  
20 the condemned land. The condemner or the condemner's  
21 assignee, shall provide easement for access to the owner of  
22 property severed by the condemnation. The public way shall be  
23 maintained by the condemner or the condemner's assignee, and  
24 shall not be considered any part of the primary or secondary  
25 road systems.

26 Sec. 2. Section 6A.21, subsection 2, Code 2005, is amended  
27 to read as follows:

28 2. The limitation on the definition of public use, public  
29 purpose, or public improvement does not apply to a slum area  
30 or blighted area as defined in section 403.17, or to  
31 agricultural land acquired for industry as that term is  
32 defined in section 260E.2, or to the establishment,  
33 relocation, or improvement of a road pursuant to chapter 306,  
34 or to the establishment of a railway under the supervision of  
35 the department of transportation as provided in section

1 327C.2, or to an airport as defined in section 328.1, or to  
2 land acquired in order to replace or mitigate land used in a  
3 road project when federal law requires replacement or  
4 mitigation. This limitation also does not apply to utilities  
5 or persons under the jurisdiction of the Iowa utilities board  
6 in the department of commerce or to any other utility  
7 conferred the right by statute to condemn private property or  
8 to otherwise exercise the power of eminent domain.

9 Sec. 3. NEW SECTION. 6A.22 ADDITIONAL LIMITATIONS ON  
10 EXERCISE OF POWER -- DEFINITIONS.

11 1. In addition to the limitations in section 6A.21, the  
12 authority of an acquiring agency to condemn any private  
13 property through eminent domain may only be exercised for a  
14 public purpose, public use, or public improvement. However,  
15 if the owner of the property consents to the condemnation, the  
16 property may be condemned for any purpose.

17 2. a. "Public use", "public purpose", or "public  
18 improvement" means one or more of the following:

19 (1) The possession, occupation, and enjoyment of property  
20 by the general public or governmental entities.

21 (2) The acquisition of any interest in property necessary  
22 to the function of a public or private utility, common  
23 carrier, or airport or airport system.

24 (3) Private use that is incidental to the public use of  
25 the property, provided that no property shall be condemned  
26 solely for the purpose of facilitating such incidental private  
27 use.

28 (4) The acquisition of property pursuant to chapter 455H.

29 (5) The acquisition of property in that portion of an  
30 urban renewal area designated as a slum or blighted area if  
31 each parcel, or any improvements thereon, for which  
32 condemnation is sought is determined by the governing body of  
33 the municipality to be in a slum or blighted condition.

34 However, for a project or acquisition plan adopted by the  
35 governing body of a city or county after due deliberation and

1 public input, if seventy-five percent or more of the assessed  
2 value of the property included in the plan consists of  
3 property that is determined to be in a slum or blighted  
4 condition at the time the plan was established, the entire  
5 project or acquisition plan area is subject to condemnation by  
6 the municipality.

7 In any action contesting a determination made pursuant to  
8 this subparagraph (5), the burden of proof is on the  
9 municipality to prove by clear and convincing evidence that it  
10 did not abuse its discretion in making such a determination.

11 For purposes of this subparagraph (5), "blighted condition"  
12 means the presence of a substantial number of slum or  
13 deteriorated structures; faulty lot layout in relation to  
14 size, adequacy, or accessibility; insanitary or unsafe  
15 conditions; excessive and uncorrected deterioration of site or  
16 other improvements; tax or special assessment delinquency  
17 exceeding the fair value of the land; defective or unusual  
18 conditions of title; or the existence of conditions which  
19 endanger life or property by fire and other causes; or the  
20 existence of conditions which retard the provision of housing  
21 accommodations for low or moderate income families, or is a  
22 menace to the public health and safety in its present  
23 condition and use.

24 For purposes of this subparagraph (5), "slum condition"  
25 means a condition conducive to ill health, transmission of  
26 disease, infant mortality, juvenile delinquency, or crime, or  
27 detrimental to the public health and safety due to a  
28 predominance of buildings or improvements, whether residential  
29 or nonresidential, by reason of the following: by reason of  
30 dilapidation, deterioration that is excessive and uncorrected,  
31 age or obsolescence; by reason of inadequate provision for  
32 ventilation, light, air, sanitation, or open spaces; by reason  
33 of high density of population and overcrowding; by reason of  
34 the existence of conditions which endanger life or property by  
35 fire and other causes; or by reason of any combination of such

1 factors.

2 For purposes of this subparagraph (5), in no case shall  
3 land that is agricultural land be determined to be in a slum  
4 condition or blighted condition.

5 b. Except as specifically included in the definition in  
6 paragraph "a", "public use" or "public purpose" or "public  
7 improvement" does not mean economic development activities  
8 resulting in increased tax revenues, increased employment  
9 opportunities, privately owned or privately funded housing and  
10 residential development, privately owned or privately funded  
11 commercial or industrial development or, the lease of publicly  
12 owned property to a private party.

13 c. Notwithstanding paragraph "a":

14 (1) Private property shall not be condemned for  
15 development or creation of a lake as a surface drinking water  
16  source or for recreational use, or for construction of sewer  
17 treatment facilities, unless the acquiring agency demonstrates  
18 that no other prudent and feasible alternative exists to  
19 accomplish its purpose.

20 (2) Private property shall not be condemned to develop or  
21 create a park or recreational facility unless the acquiring  
22 agency demonstrates that a good faith effort has been made to  
23 purchase a prudent and feasible location from a willing seller  
24 for the park or facility.

25 (3) Private property shall not be condemned for  
26 construction of a landfill unless the property to be condemned  
27 is located immediately adjacent to an existing landfill.

28 (4) The use of eminent domain authority to acquire private  
29 property in the unincorporated area of a county for use as an  
30 airport, airport system, or aviation facilities is prohibited,  
31 notwithstanding any provision of the law to the contrary, if  
32 the property to be condemned is located outside the geographic  
33 boundaries of the city or county operating the airport,  
34 airport system, or aviation facilities or outside the  
35 geographic boundaries of the member municipalities of the

1 Commission or authority. However, an acquiring agency may  
2 proceed with condemnation of property under these  
3 circumstances if the board of supervisors of the county where  
4 the property for which condemnation is sought is located holds  
5 a public hearing on the matter and subsequent to the hearing  
6 approves, by resolution, the condemnation action.

7 3. In any action contesting whether eminent domain  
8 authority is being exercised for a public use, public purpose,  
9 or public improvement, the burden of proof is on the acquiring  
10 agency to prove by clear and convincing evidence that the  
11 proposed use of the property meets the definition of public  
12 use, public purpose, or public improvement in subsection 2 and  
13 that there is no prudent and feasible alternative to  
14 condemnation of the property.

15 Sec. 4. Section 6B.2A, subsection 1, unnumbered paragraph  
16 1, Code 2005, is amended to read as follows:

17 An acquiring agency shall provide written notice of a  
18 public hearing to each owner and any contract purchaser of  
19 record of ~~agricultural-land~~ private property that may be the  
20 subject of condemnation. The authority under this chapter is  
21 not conferred and condemnation proceedings shall not begin  
22 unless a good faith effort is made to mail and publish the  
23 notice as provided in this section on the owner and any  
24 contract purchaser of record of the property subject to  
25 condemnation. The notice shall be mailed by ordinary mail,  
26 not less than thirty days before the date the hearing is held,  
27 to the owner and any contract purchaser of record of each  
28 property or property interest at the owner's and contract  
29 purchaser's last known address as shown in the records of the  
30 county auditor not less than seven days nor more than fourteen  
31 days prior to the date of mailing. A change in ownership of  
32 any such property which is not reflected in the records of the  
33 county auditor during the period those records are searched as  
34 above provided shall not affect the validity of the notice or  
35 any condemnation proceeding commenced on the basis of such

1 notice. The notice shall be given and the public hearing held  
2 before adoption of the ordinance, resolution, motion, or other  
3 declaration of intent to fund the final site-specific design  
4 for the public improvement, to make the final selection of the  
5 route or site location for the public improvement, or to  
6 acquire or condemn, if necessary, all or a portion of the  
7 property or an interest in the property for the public  
8 improvement. If the location of the public improvement is  
9 changed or expanded after the decision has been made to  
10 proceed with the public improvement, a notice shall be mailed  
11 by ordinary mail no less than thirty days before the adoption  
12 of the ordinance, resolution, motion, or other declaration of  
13 intent to proceed with a change in the location of the public  
14 improvement to the owner and any contract purchaser of record  
15 of the ~~land~~ property to be acquired or condemned, if  
16 necessary, in the new location of the public improvement  
17 affected by the change. The mailed notice shall, at a  
18 minimum, include the following information:

19 Sec. 5. Section 6B.2A, subsection 2, unnumbered paragraph  
20 1, Code 2005, is amended to read as follows:

21 The acquiring agency shall cause a notice to be published  
22 once in a newspaper of general circulation in the county or  
23 city where the ~~agricultural-land~~ property to be acquired or  
24 condemned is located. The acquiring agency shall also post  
25 the notice in a conspicuous place on the property. The notice  
26 shall be published and posted at least four but no more than  
27 twenty days before the public hearing is held as referred to  
28 in subsection 1. The ~~published~~ notice shall, at a minimum,  
29 include the following information:

30 Sec. 6. Section 6B.2A, subsection 4, Code 2005, is amended  
31 to read as follows:

32 4. This section shall apply to the state department of  
33 transportation only when the property to be condemned by or on  
34 behalf of the department is agricultural land. However, this  
35 section shall not apply to a condemnation of ~~property~~

1 agricultural land by the state department of transportation or  
2 a county for right-of-way that is contiguous to an existing  
3 road right-of-way and necessary for the maintenance, safety  
4 improvement, repair, or upgrade of the existing road.  
5 Notwithstanding section 6B.2C, a condemnation of property by  
6 the state department of transportation pursuant to this  
7 subsection shall be approved by the director of the department  
8 of transportation. For purposes of this subsection, "upgrade"  
9 means to bring a road or bridge up to currently acceptable  
10 standards, including improved geometrics, passing lanes,  
11 turning lanes, climbing lanes, and improved shoulders.  
12 "Upgrade" does not include expanding a highway from two lanes  
13 to four lanes.

14 Sec. 7. Section 6B.2B, Code 2005, is amended to read as  
15 follows:

16 **6B.2B ACQUISITION NEGOTIATION STATEMENT-OF-RIGHTS.**

17 The acquiring agency shall make a good faith effort to  
18 negotiate with the owner to purchase the private property or  
19 property interest before filing an application for  
20 condemnation or otherwise proceeding with the condemnation  
21 process. An acquiring agency shall not make an offer to  
22 purchase the property or property interest that is less than  
23 the fair market value the acquiring agency has established for  
24 the property or property interest pursuant to the appraisal  
25 required in section 6B.45 or less than the value determined  
26 under the acquiring agency's waiver procedure established  
27 pursuant to section 6B.54, subsection 2, for acquisition of  
28 property with a low fair market value. A purchase offer made  
29 by an acquiring agency shall include provisions for payment to  
30 the owner of expenses, including relocation expenses, expenses  
31 listed in section 6B.54, subsection 10, and other expenses  
32 required by law to be paid by an acquiring agency to a  
33 condemnee. However, an in the alternative, the acquiring  
34 agency may offer, and the owner may accept, a purchase offer  
35 from the acquiring agency that is an amount equal to one

1 hundred twenty-five percent of the appraisal amount plus  
2 payment to the owner of expenses listed in section 6B.54,  
3 subsection 10, once those expenses have been determined. If  
4 the owner accepts such a purchase offer, the owner is barred  
5 from claiming payment from the acquiring agency for any other  
6 expenses allowed by law. An acquiring agency need not make an  
7 offer in excess of that-amount the amounts described in this  
8 section in order to satisfy the requirement to negotiate in  
9 good faith. An-acquiring-agency-is-deemed-to-have-met-the  
10 requirements-of-this-section-if-the-acquiring-agency-complies  
11 with-section-6B.54.

12 Sec. 8. Section 6B.3, subsection 1, paragraph d, Code  
13 2005, is amended to read as follows:

14 d. The purpose for which condemnation is sought. For  
15 ~~purposes-of-section-6B.4A7-if-condemnation-of-agricultural~~  
16 ~~land-is-sought-by-a-city-or-county7-or-an-agency-of-a-city-or~~  
17 ~~county7-for-location-of-an-industry-as-that-term-is-defined-in~~  
18 ~~section-260E-27-the-application-shall-so-state.--However7-the~~  
19 ~~city-or-county-shall-not-be-required-to-disclose-information~~  
20 ~~on-an-industrial-prospect-with-which-the-city-or-county-is~~  
21 ~~currently-negotiating.~~

22 Sec. 9. Section 6B.3, subsection 2, unnumbered paragraph  
23 1, Code 2005, is amended to read as follows:

24 The applicant shall mail a copy of the application by  
25 certified mail to the owner at the owner's last known address  
26 and to any record lienholder or encumbrancer of the property  
27 at the lienholder's or encumbrancer's last known address. The  
28 applicant shall also cause the application to be published  
29 once in a newspaper of general circulation in the county, not  
30 less than four nor more than twenty days before the meeting of  
31 the compensation commission to assess the damages. Service of  
32 the application by publication shall be deemed complete on the  
33 day of publication. The applicant shall also post a copy of  
34 the application in a conspicuous place on the property not  
35 less than four nor more than twenty days before the meeting of

1 the compensation commission to assess the damages.

2 Sec. 10. Section 6B.3, subsection 3, unnumbered paragraph  
3 2, Code 2005, is amended to read as follows:

4 When indexed, the proceeding is considered pending so as to  
5 charge all persons not having an interest in the property with  
6 notice of its pendency, and while pending no interest can be  
7 acquired by the third parties in the property against the  
8 rights of the applicant. If the appraisal of damages by  
9 the commission pursuant to section 6B.14 is not made within  
10 one hundred twenty days of indexing, the proceedings  
11 instituted under this section are terminated and all rights  
12 and interests of the applicant arising out of the application  
13 for condemnation terminate. The applicant may reinstitute a  
14 new condemnation proceeding at any time. The reinstated  
15 proceedings are entirely new proceedings and not a revival of  
16 the terminated proceeding.

17 Sec. 11. NEW SECTION. 6B.3A CHALLENGE BY OWNER.

18 An owner of property described in an application for  
19 condemnation may bring an action to challenge the exercise of  
20 eminent domain authority or the condemnation proceedings in  
21 the district court of the county in which the private property  
22 is situated. The action shall be brought within thirty days  
23 from the date of mailing the notice of appraisal of damages  
24 under section 6B.18. Notice of the action shall be given as  
25 provided in section 6B.18.

26 Sec. 12. Section 6B.8, Code 2005, is amended to read as  
27 follows:

28 6B.8 NOTICE OF ASSESSMENT.

29 The applicant, or the owner or any lienholder or  
30 encumbrancer of any land described in the application, may, at  
31 any time after the appointment of the commissioners, have the  
32 damages to the lands of any such owner assessed by giving the  
33 other party, if a resident of this state, thirty days' notice,  
34 in writing. The notice shall specify the day and the hour  
35 when the compensation commission will meet, view the premises,

1 and assess the damages. The notice shall be personally served  
2 upon all necessary parties in the same manner provided by the  
3 Iowa rules of civil procedure for the personal service of  
4 original notice. ~~If a city or county, or an agency of a city  
5 or county, is seeking to condemn agricultural land for an  
6 industry as that term is defined in section 260E.2, the notice  
7 shall inform the landowner that the landowner may request that  
8 the compensation commission review the application as provided  
9 in section 6B.4A.~~

10 Sec. 13. Section 6B.14, unnumbered paragraph 2, Code 2005,  
11 is amended to read as follows:

12 Prior to the meeting of the commission, the commission or a  
13 commissioner shall not communicate with the applicant,  
14 property owner, or tenant, or their agents, regarding the  
15 condemnation proceedings. The commissioners shall meet in  
16 open session to view the property and to receive evidence, but  
17 may and shall deliberate in closed open session. However, if  
18 the acquiring agency is the state department of  
19 transportation, the commission may deliberate in closed  
20 session. After deliberations commence, the commission and  
21 each commissioner is prohibited from communicating with any  
22 party to the proceeding, unless such communication occurs in  
23 the presence of or with the consent of the property owner and  
24 the other parties who appeared before the commission. The  
25 commission shall keep minutes of all its meetings showing the  
26 date, time, and place, the members present, and the action  
27 taken at each meeting. The minutes shall show the results of  
28 each vote taken and information sufficient to indicate the  
29 vote of each member present. The vote of each member present  
30 shall be made public at the open session. The minutes shall  
31 be public records open to public inspection.

32 Sec. 14. Section 6B.14, Code 2005, is amended by adding  
33 the following new unnumbered paragraph after unnumbered  
34 paragraph 2:

35 NEW UNNUMBERED PARAGRAPH. In determining fair market value

1 of property, the commissioners shall not consider only the  
2 assessed value assigned to such property for purposes of  
3 property taxation.

4 Sec. 15. Section 6B.42, subsection 1, paragraph a, Code  
5 2005, is amended to read as follows:

6 a. The acquiring agency shall provide to the person, in  
7 addition to any other sums of money in payment of just  
8 compensation, the payments and assistance required by law, in  
9 accordance with chapter 316, as if the acquiring agency were a  
10 displacing agency under that chapter.

11 Sec. 16. Section 6B.45, Code 2005, is amended to read as  
12 follows:

13 6B.45 MAILING COPY OF APPRAISAL.

14 When any real property or interest in real property is to  
15 be purchased, or in lieu thereof to be condemned, the  
16 acquiring agency or its agent shall submit to the person,  
17 corporation, or entity whose property or interest in the  
18 property is to be taken, by ordinary mail, at least ten days  
19 prior to the date upon which the acquiring agency or its agent  
20 contacts the property owner to commence negotiations, a copy  
21 of the appraisal in its entirety upon such real property or  
22 interest in such real property prepared for the acquiring  
23 agency or its agent, which shall include, at a minimum, an  
24 itemization of the appraised value of the real property or  
25 interest in the property, any buildings on the property, all  
26 other improvements including fences, severance damages, and  
27 loss of access. In determining fair market value of property,  
28 the commissioners shall not consider only the assessed value  
29 assigned to such property for purposes of property taxation.  
30 The appraisal sent to the condemnee shall be that appraisal  
31 upon which the condemnor will rely to establish an amount  
32 which the condemnor believes to be just compensation for the  
33 real property. All other appraisals made on the property as a  
34 result of the condemnation proceeding shall be made available  
35 to the condemnee upon request. In lieu of an appraisal, a

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

12 Only the appraisal prepared under this section shall be  
13 forwarded to the compensation commission by the acquiring  
14 agency.

15 Sec. 17. Section 6B.54, Code 2005, is amended to read as  
16 follows:

17 6B.54 ~~FEDERALLY-ASSISTED-PROJECT-AND-DISPLACING-ACTIVITIES~~  
18 -- ACQUISITION POLICIES FOR ACQUIRING AGENCIES.

19 ~~For any project-or-displacing-activity-that-has-received-or~~  
20 ~~will-receive-federal-financial-assistance-as-defined-in~~  
21 ~~section-316-17,-for-any-state-funded-projects,-or-for-any-other~~  
22 public use, public purpose, or public improvement for which  
23 condemnation is sought, an acquiring agency shall, at a  
24 minimum, satisfy the following policies:

25 1. Every reasonable and good faith effort shall be made to  
26 acquire expeditiously real property by negotiation as provided  
27 in section 6B.2B.

28 2. Real property shall be appraised as required by section  
29 6B.45 before the initiation of negotiations, and the owner or  
30 the owner's designated representative shall be given an  
31 opportunity to accompany at least one appraiser of the  
32 acquiring agency during an inspection of the property, except  
33 that an acquiring agency may prescribe a procedure to waive  
34 the appraisal in cases involving the acquisition of property  
35 with a low fair market value. In lieu of an appraisal, a

1 utility or person under the jurisdiction of the utilities  
2 board of the department of commerce, or any other utility  
3 conferred the right by statute to condemn private property,  
4 shall provide in writing by certified mail to the owner of  
5 record thirty days before negotiations, the methods and  
6 factors used in arriving at an offered price for voluntary  
7 easements including the range of cash amount of each  
8 component.

9 3. Before the initiation of negotiations for real  
10 property, the acquiring agency shall establish an amount which  
11 it believes to be just compensation for the real property, and  
12 shall make a prompt offer to acquire the property for the full  
13 amount established by the agency. In no event shall the  
14 amount be less than the ~~lowest appraisal of the~~ fair market  
15 value of the acquiring agency has established for the property  
16 or property interest pursuant to the appraisal required in  
17 section 6B.45 or less than the value determined under the  
18 acquiring agency's waiver procedure established pursuant to  
19 subsection 2. A purchase offer made by an acquiring agency  
20 shall include provisions for payment to the owner of expenses,  
21 including relocation expenses, expenses listed in subsection  
22 10, and other expenses required by law to be paid by an  
23 acquiring agency to a condemnee. However, in the alternative,  
24 the acquiring agency may offer, and the owner may accept, a  
25 purchase offer from the acquiring agency that is an amount  
26 equal to one hundred twenty-five percent of the appraisal  
27 amount plus payment to the owner of expenses listed in  
28 subsection 10, once those expenses have been determined. If  
29 the owner accepts such a purchase offer, the owner is barred  
30 from claiming payment from the acquiring agency for any other  
31 expenses allowed by law. In the case of a utility or person  
32 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, the amount shall  
35 not be less than the amount indicated by the methods and

1 factors used in arriving at an offered price for a voluntary  
2 easement.

3 4. The construction or development of a public improvement  
4 shall be so scheduled that, to the greatest extent  
5 practicable, no person lawfully occupying real property shall  
6 be required to move from a dwelling or to move the person's  
7 business or farm operation without at least ninety days'  
8 written notice of the date by which the move is required.

9 5. If after damages have been finally determined and paid,  
10 an owner or tenant is permitted to occupy the real property  
11 acquired on a rental basis for a short term or for a period  
12 subject to termination on short notice, the amount of rent  
13 required shall not exceed the fair rental value of the  
14 property to a short-term occupier.

15 6. In no event shall the time of condemnation be advanced,  
16 or negotiations or condemnation and the deposit of funds in  
17 court for the use of the owner be deferred, or any other  
18 coercive action be taken to compel an agreement on the price  
19 to be paid for the property.

20 7. If an interest in real property is to be acquired by  
21 exercise of the power of eminent domain, formal condemnation  
22 proceedings shall be instituted. The acquiring agency shall  
23 not intentionally make it necessary for an owner to institute  
24 legal proceedings to prove the fact of the taking of the  
25 owner's real property.

26 8. If the acquisition of only a portion of property would  
27 leave the owner with an uneconomical remnant, the acquiring  
28 agency shall offer to acquire that remnant. For the purposes  
29 of this chapter, an "uneconomical remnant" is a parcel of real  
30 property in which the owner is left with an interest after the  
31 partial acquisition of the owner's property, where the  
32 acquiring agency determines that the parcel has little or no  
33 value or utility to the owner.

34 9. A person whose real property is being acquired in  
35 accordance with this chapter, after the person has been fully

1 informed of the person's right to receive just compensation  
2 for the property, may donate the property, any part of the  
3 property, any interest in the property, or any compensation  
4 paid for it as the person may determine.

5 10. As soon as practicable after the date of payment of  
6 the purchase price or the date of deposit in court of funds to  
7 satisfy the award of compensation in a condemnation proceeding  
8 to acquire real property, whichever is earlier, the acquiring  
9 agency shall reimburse the owner, to the extent the acquiring  
10 agency deems fair and reasonable, for expenses the owner  
11 necessarily incurred for all of the following:

12 a. Recording fees, transfer taxes, and similar expenses  
13 incidental to conveying the real property to the acquiring  
14 agency.

15 b. Penalty costs for full or partial prepayment of any  
16 preexisting recorded mortgage entered into in good faith  
17 encumbering the real property.

18 c. Reasonable attorney fees and reasonable costs,  
19 including expert witness fees and fees relating to appraisal  
20 of the property.

21 Payments and expenditures under this subsection are  
22 incident to and arise out of the program or project for which  
23 the acquisition activity takes place. Such payments and  
24 expenditures may be made from the funds made available for the  
25 program or project.

26 A person aggrieved by a determination as to the eligibility  
27 for or amount of a reimbursement may apply to have the matter  
28 reviewed by the acquiring agency or in accordance with section  
29 316.9 if applicable.

30 11. An owner shall not be required to surrender possession  
31 of real property before the acquiring agency concerned pays  
32 the agreed purchase price.

33 12. After damages have been finally determined and paid,  
34 the acquiring agency may offer, and the owner may accept, an  
35 amount equal to twenty-five percent of the amount of damages

1 plus payment to the owner of expenses listed in subsection 10,  
2 once those expenses have been determined. If the owner  
3 accepts such an offer, the owner is barred from claiming  
4 payment from the acquiring agency for any other expenses  
5 allowed by law.

6 Sec. 18. Section 6B.55, unnumbered paragraph 1, Code 2005,  
7 is amended to read as follows:

8 For any ~~program or project that has received or will~~  
9 ~~receive federal financial assistance as defined in section~~  
10 ~~316-17 for any state-funded projects, or for any other public~~  
11 use, public purpose, or public improvement for which  
12 condemnation is sought, an acquiring agency shall at a minimum  
13 satisfy the following policies:

14 Sec. 19. Section 6B.56, subsection 2, Code 2005, is  
15 amended to read as follows:

16 2. Before the real property may be offered for sale to the  
17 general public, the condemner shall notify the prior owner of  
18 the real property condemned in writing of the condemner's  
19 intent to dispose of the real property, of the current  
20 appraised value of the real property, and of the prior owner's  
21 right to purchase the real property within sixty days from the  
22 date the notice is served at a price equal to the current  
23 appraised value of the real property or the fair market value  
24 of the property at the time it was acquired by the acquiring  
25 agency from the prior owner, whichever is less. The notice  
26 sent by the condemner as provided in this subsection shall be  
27 filed with the office of the recorder in the county in which  
28 the real property is located.

29 Sec. 20. NEW SECTION. 6B.56A DISPOSITION OF CONDEMNED  
30 PROPERTY -- ACTION TO RECLAIM.

31 When five years have elapsed since property was condemned  
32 and the property has not been used for the purpose stated in  
33 the application filed pursuant to section 6B.3 and the  
34 acquiring agency has not taken action to dispose of the  
35 property pursuant to section 6B.56, the previous owner may

1 bring an action in the district court where the property is  
2 located to reclaim title to the property. The action shall be  
3 brought within one hundred eighty days after the five-year  
4 time period has elapsed. Upon the filing of the action with  
5 the court, the previous owner shall pay to the county sheriff  
6 that portion of the damages which reflected the fair market  
7 value of the property at the time of acquisition. After  
8 notice of the action has been served on the acquiring agency,  
9 the previous owner shall also file a copy of the notice with  
10 the county recorder for recording. Thirty days after service  
11 of the notice, and upon proof of payment to the sheriff being  
12 filed with the court, the court shall order that title to the  
13 property be transferred to the previous owner.

14 An acquiring agency shall give written notice to the owner  
15 of the right to reclaim title under this section at the time  
16 damages are paid to the owner.

17 This section does not apply to property acquired by the  
18 state department of transportation.

19 Sec. 21. NEW SECTION. 6B.60 RENTAL CHARGES PROHIBITED.

20 Rent for property for which damages have been determined  
21 shall not be charged and shall not accrue against the property  
22 owner until such damages have been finally determined and paid  
23 and all court challenges related to the condemnation have been  
24 finally adjudicated.

25 Sec. 22. NEW SECTION. 6B.61 APPROVAL OF LOCAL ELECTED  
26 OFFICIALS REQUIRED.

27 Notwithstanding any provision of law to the contrary, any  
28 entity created by or on behalf of one or more political  
29 subdivisions and granted, by statute, eminent domain authority  
30 to acquire property shall not exercise such authority without  
31 first presenting the proposal to acquire property by eminent  
32 domain to the governing body of each political subdivision  
33 that created the entity or on whose behalf the entity was  
34 created and such proposal receives the approval, by  
35 resolution, of each governing body. This section does not

1 apply to a multistate entity created to provide drinking water  
2 which has received or is receiving federal funds.

3 This section does not apply to a person issued a  
4 certificate of public convenience, use, and necessity under  
5 chapter 476A.

6 Sec. 23. NEW SECTION. 6B.62 PROPERTY TAXES ON CERTAIN  
7 REPLACEMENT PROPERTY.

8 Notwithstanding any other provision to the contrary, for  
9 ten fiscal years following condemnation, property taxes on  
10 replacement property acquired by a prior owner within the same  
11 county where the condemned property is located shall not  
12 exceed the lesser of the amount of property taxes levied  
13 against the condemned property during the fiscal year in which  
14 the property was acquired by the acquiring agency or the  
15 amount of property taxes levied against the replacement  
16 property for the current fiscal year.

17 Sec. 24. Section 28F.11, Code 2005, is amended to read as  
18 follows:

19 28F.11 EMINENT DOMAIN.

20 Any public agency participating in an agreement authorizing  
21 the joint exercise of governmental powers pursuant to this  
22 chapter may exercise its power of eminent domain to acquire  
23 interests in property, under provisions of law then in effect  
24 and applicable to the public agency, for the use of the entity  
25 created to carry out the agreement, provided that the power of  
26 eminent domain is not used to acquire interests in property  
27 which is part of a system of facilities in existence, under  
28 construction, or planned, for the generation, transmission or  
29 sale of electric power. In the exercise of the power of  
30 eminent domain, the public agency shall proceed in the manner  
31 provided by chapter 6B. Any interests in property acquired  
32 are acquired for a public purpose, as defined in chapter 6A,  
33 of the condemning public agency, and the payment of the costs  
34 of the acquisition may be made pursuant to the agreement or to  
35 any separate agreement between the public agency and the

1 entity or the other public agencies participating in the  
2 entity or any of them. Upon payment of costs, any property  
3 acquired is the property of the entity.

4 Sec. 25. Section 316.4, subsection 1, Code 2005, is  
5 amended to read as follows:

6 1. If a program or project undertaken by a displacing  
7 agency will result in the displacement of a person, the  
8 displacing agency shall make a payment to the displaced  
9 person, upon proper application as approved by the displacing  
10 agency, for actual reasonable and necessary expenses incurred  
11 in moving the person, the person's family, business, farm  
12 operation, or other personal property subject to rules and  
13 limits established by the department. The payment may also  
14 provide for actual direct losses of tangible personal  
15 property, purchase of substitute personal property, business  
16 reestablishment expenses, storage expenses, and expenses  
17 incurred in searching for a replacement business or farm. If  
18 relocation of a business or farm operation is not economically  
19 feasible, the displaced person may also apply for payment of  
20 the loss of existing business relationships because of the  
21 inability to relocate the business or farm operation to a  
22 location similar in economic advantage to the location from  
23 which the business or farm operation was moved.

24 Sec. 26. Section 327I.7, subsection 4, Code 2005, is  
25 amended to read as follows:

26 4. Exercise the power of eminent domain consistent with  
27 the provisions of chapters 6A and 6B.

\*28 Sec. 27. Section 330A.8, subsection 11, Code 2005, is  
29 amended to read as follows:

30 11. To have the power of eminent domain, ~~such-power-to-be~~  
31 ~~exercised-in-the-manner-provided-by-law-for-municipal~~  
32 ~~corporations-of-this-state~~ but only as provided in section  
33 330A.13.

34 Sec. 28. Section 346.27, subsection 9, paragraph b, Code  
35 2005, is amended to read as follows:

1 b. To acquire in the corporate name of the authority the  
2 fee simple title to the real property located within the area  
3 by purchase, gift, devise, or by the exercise of the power of  
4 eminent domain consistent with the provisions of chapters 6A  
5 and 6B, or to take possession of real estate by lease.

6 Sec. 29. Section 364.4, subsection 1, Code 2005, is  
7 amended to read as follows:

8 1. Acquire, hold, and dispose of property outside the city  
9 in the same manner as within. However, the power of a city to  
10 acquire property outside the city does not include the power  
11 to acquire property outside the city by eminent domain, except  
12 for the following, but only to the extent the city had this  
13 power prior to July 1, 2006:

14 a. The operation of a city utility as defined in section  
15 362.2.

16 b. The operation of a city franchise conferred the  
17 authority to condemn private property under section 364.2.

18 c. The operation of a combined utility system as defined  
19 in section 384.80.

20 d. The operation of a municipal airport.

21 Sec. 30. Section 389.3, unnumbered paragraph 2, Code 2005,  
22 is amended to read as follows:

23 A joint water utility is a political subdivision and an  
24 instrumentality of municipal government. The statutory  
25 powers, duties, and limitations conferred upon a city utility  
26 apply to a joint water utility, except that title to property  
27 of a joint water utility may be held in the name of the joint  
28 water utility. The joint water utility board shall have all  
29 powers and authority of a city with respect to property which  
30 is held by the joint water utility. A joint water utility  
31 shall have the power of eminent domain, including the powers,  
32 duties, and limitations conferred upon a city in chapters 6A  
33 and 6B, for the purposes of constructing and operating a joint  
34 water utility.

35 Sec. 31. Section 403.2, subsection 4, Code 2005, is

1 amended to read as follows:

2 4. It is further found and declared that the powers  
3 conferred by this chapter are for public uses and purposes for  
4 which public money may be expended and for which the power of  
5 eminent domain, to the extent authorized, and police power  
6 exercised; and that the necessity in the public interest for  
7 the provisions herein enacted is hereby declared as a matter  
8 of legislative determination.

9 Sec. 32. Section 403.5, subsection 4, paragraph b,  
10 subparagraph (2), Code 2005, is amended to read as follows:

11 (2) If it is to be developed for nonresidential uses, the  
12 local governing body shall determine that such nonresidential  
13 uses are necessary and appropriate to facilitate the proper  
14 growth and development of the community in accordance with  
15 sound planning standards and local community objectives.

16 PARAGRAPH DIVIDED. The acquisition of open land authorized  
17 in subparagraphs (1) and (2) may require the exercise of  
18 governmental action, as provided in this chapter, because of  
19 defective or unusual conditions of title, diversity of  
20 ownership, tax delinquency, improper subdivisions, outmoded  
21 street patterns, deterioration of site, economic disuse,  
22 unsuitable topography or faulty lot layouts, or because of the  
23 need for the correlation of the area with other areas of a  
24 municipality by streets and modern traffic requirements, or  
25 any combination of such factors or other conditions which  
26 retard development of the area. If such governmental action  
27 involves the exercise of eminent domain authority, the  
28 municipality is subject to the limitations of this chapter and  
29 chapters 6A and 6B.

30 Sec. 33. Section 403.5, subsection 4, unnumbered paragraph  
31 2, Code 2005, is amended by striking the unnumbered paragraph.

32 Sec. 34. Section 403.6, subsection 3, Code 2005, is  
33 amended to read as follows:

34 3. Within its area of operation, to enter into any  
35 building or property in any urban renewal area in order to

1 make inspections, surveys, appraisals, soundings or test  
2 borings, and to obtain an order for this purpose from a court  
3 of competent jurisdiction in the event entry is denied or  
4 resisted; to acquire by purchase, lease, option, gift, grant,  
5 bequest, devise, eminent domain or otherwise, any real  
6 property, or personal property for administrative purposes,  
7 together with any improvements thereon; to hold, improve,  
8 clear or prepare for redevelopment any such property; to  
9 mortgage, pledge, hypothecate or otherwise encumber or dispose  
10 of any real property; to insure or provide for the insurance  
11 of any real or personal property or operations of the  
12 municipality against any risks or hazards, including the power  
13 to pay premiums on any such insurance; and to enter into any  
14 contracts necessary to effectuate the purposes of this  
15 chapter:--Provided, however, that no statutory provision with  
16 respect to the acquisition, clearance or disposition of  
17 property by public bodies shall restrict a municipality or  
18 other public body exercising powers hereunder in the exercise  
19 of such functions with respect to an urban renewal project,  
20 unless the legislature shall specifically so state. A  
21 municipality or other public body exercising powers under this  
22 chapter with respect to the acquisition, clearance, or  
23 disposition of property shall not be restricted by any other  
24 statutory provision in the exercise of such powers unless such  
25 statutory provision specifically states its application to  
26 this chapter or unless this chapter specifically applies  
27 restrictions contained in another statutory provision to the  
28 powers that may be exercised under this chapter.

29 Sec. 35. Section 403.7, Code 2005, is amended to read as  
30 follows:

31 403.7 CONDEMNATION OF PROPERTY.

32 1. A municipality shall have the right to acquire by  
33 condemnation any interest in real property, including a fee  
34 simple title thereto, which it may deem necessary for or in  
35 connection with an urban renewal project under this chapter,

1 subject to the limitations on eminent domain authority in  
2 chapter 6A. However, a municipality shall not condemn  
3 agricultural land included within an economic development area  
4 for any use unless the owner of the agricultural land consents  
5 to condemnation or unless ~~the agricultural land is to be~~  
6 ~~acquired for industry as that term is defined in section~~  
7 260E-2 the municipality determines that the land is necessary  
8 or useful for any of the following:

9 a. The operation of a city utility as defined in section  
10 362.2.

11 b. The operation of a city franchise conferred the  
12 authority to condemn private property under section 364.2.

13 c. The operation of a combined utility system as defined  
14 in section 384.80.

15 2. A municipality ~~may~~ shall exercise the power of eminent  
16 domain in the manner provided in chapter 6B, ~~and Acts~~  
17 ~~amendatory to that chapter or supplementary to that chapter,~~  
18 ~~or it may exercise the power of eminent domain in the manner~~  
19 ~~now or which may be hereafter provided by any other statutory~~  
20 ~~provisions for the exercise of the power of eminent domain.~~  
21 Property already devoted to a public use may be acquired in  
22 like manner. However, real property belonging to the state,  
23 or any political subdivision of this state, shall not be  
24 acquired without its consent, and real property or any right  
25 or interest in the property owned by any public utility  
26 company, pipeline company, railway or transportation company  
27 vested with the right of eminent domain under the laws of this  
28 state, shall not be acquired without the consent of the  
29 company, or without first securing, after due notice to the  
30 company and after hearing, a certificate authorizing  
31 condemnation of the property from the board, commission, or  
32 body having the authority to grant a certificate authorizing  
33 condemnation.

34 3. In a condemnation proceeding, if a municipality  
35 proposes to take a part of a lot or parcel of real property,

1 the municipality shall also take the remaining part of the lot  
2 or parcel if requested by the owner.

3 Sec. 36. Section 403A.3, subsection 4, Code 2005, is  
4 amended to read as follows:

5 4. To lease or rent any dwellings, accommodations, lands,  
6 buildings, structures or facilities embraced in any project  
7 and (subject to the limitations contained in this chapter with  
8 respect to the rental of dwellings in housing projects) to  
9 establish and revise the rents or charges therefor; to own,  
10 hold and improve real or personal property; to purchase,  
11 lease, obtain options upon, acquire by gift, grant, bequest,  
12 devise or otherwise any real or personal property or any  
13 interest therein; to acquire by the exercise of the power of  
14 eminent domain any real property subject to section 403A.20;  
15 to sell, lease, exchange, transfer, assign, pledge or dispose  
16 of any real or personal property or any interest therein; to  
17 insure or provide for the insurance, in any stock or mutual  
18 company of any real or personal property or operations of the  
19 municipality against any risks or hazards; to procure or agree  
20 to the procurement of federal or state government insurance or  
21 guarantees of the payment of any bonds or parts thereof issued  
22 by a municipality, including the power to pay premiums on any  
23 such insurance.

24 Sec. 37. Section 403A.20, Code 2005, is amended to read as  
25 follows:

26 403A.20 CONDEMNATION OF PROPERTY.

27 A municipality shall have the right to acquire by  
28 condemnation any interest in real property, including a fee  
29 simple title thereto, which it may deem necessary for or in  
30 connection with a municipal housing project under this  
31 chapter, subject to the limitations on eminent domain  
32 authority in chapter 6A. A municipality ~~may~~ shall exercise  
33 the power of eminent domain in the manner provided in chapter  
34 ~~6B7-and-acts-amendatory-thereof-or-supplementary-thereto,-or~~  
35 ~~it-may-exercise-the-power-of-eminent-domain-in-the-manner-now~~

1 ~~or which may be hereafter provided by any other statutory~~  
2 ~~provisions for the exercise of the power of eminent domain.~~  
3 Property already devoted to a public use may be acquired in  
4 like manner:--~~Provided, that no.~~ However, real property  
5 belonging to the state, or any political subdivision thereof,  
6 may shall not be acquired without its consent, provided  
7 ~~further that no~~ and real property or any right or interest  
8 therein in the property owned by any public utility company,  
9 pipeline company, railway or transportation company vested  
10 with the right of eminent domain under the laws of this state,  
11 shall not be acquired without the consent of such the company,  
12 or without first securing, after due notice to such the  
13 company and after hearing, a certificate authorizing  
14 condemnation of such property from the board, commission, or  
15 body having the authority to grant a certificate authorizing  
16 condemnation.

17 In a condemnation proceeding, if a municipality proposes to  
18 take a part of a lot or parcel of real property, the  
19 municipality shall also take the remaining part of the lot or  
20 parcel if requested by the owner.

21 Sec. 38. Section 422.7, Code Supplement 2005, is amended  
22 by adding the following new subsection:

23 NEW SUBSECTION. 45. Subtract, to the extent included, the  
24 amount of ordinary or capital gain realized by the taxpayer as  
25 a result of the involuntary conversion of property due to  
26 eminent domain. However, if the total amount of such realized  
27 ordinary or capital gain is not recognized because the  
28 converted property is replaced with property that is similar  
29 to, or related in use to, the converted property, the amount  
30 of such realized ordinary or capital gain shall not be  
31 subtracted under this subsection until the remaining realized  
32 ordinary or capital gain is subject to federal taxation or  
33 until the time of disposition of the replacement property as  
34 provided under rules of the director. The subtraction allowed  
35 under this subsection shall not alter the basis as established

1 for federal tax purposes of any property owned by the  
2 taxpayer.

3 Sec. 39. Section 422.35, Code Supplement 2005, is amended  
4 by adding the following new subsection:

5 NEW SUBSECTION. 22. Subtract, to the extent included, the  
6 amount of ordinary or capital gain realized by the taxpayer as  
7 a result of the involuntary conversion of property due to  
8 eminent domain. However, if the total amount of such realized  
9 ordinary or capital gain is not recognized because the  
10 converted property is replaced with property that is similar  
11 to, or related in use to, the converted property, the amount  
12 of such realized ordinary or capital gain shall not be  
13 subtracted under this subsection until the remaining realized  
14 ordinary or capital gain is subject to federal taxation or  
15 until the time of disposition of the replacement property as  
16 provided under rules of the director. The subtraction allowed  
17 under this subsection shall not alter the basis as established  
18 for federal tax purposes of any property owned by the  
19 taxpayer.

20 Sec. 40. Section 422.73, Code 2005, is amended by adding  
21 the following new subsection:

22 NEW SUBSECTION. 3. Notwithstanding subsection 1, a claim  
23 for credit or refund of the income tax paid on the gain  
24 realized from the involuntary conversion of property due to a  
25 condemnation action is timely filed with the department as  
26 provided in this subsection if the taxpayer's claim is the  
27 result of the reacquisition by the taxpayer, as the prior  
28 owner, of the property condemned pursuant to section 6B.56,  
29 subsection 2, or section 6B.56A. The claim under this  
30 subsection shall be timely filed only if the claim is made  
31 prior to the end of the sixth month following the month in  
32 which the reacquisition occurs.

33 Sec. 41. Section 468.128, Code 2005, is amended to read as  
34 follows:

35 468.128 IMPOUNDING AREAS AND EROSION CONTROL DEVICES.

1 Levee and drainage districts are empowered to construct  
2 impounding areas and other flood and erosion control devices  
3 to protect lands of the district and drainage structures and  
4 may provide ways for access to improvements for the operation  
5 or protection thereof, where the cost is not excessive in  
6 consideration of the value to the district. Necessary lands  
7 or easements may be acquired within or without the district by  
8 purchase, lease or agreement, or by exercise of the right of  
9 eminent domain as provided for in chapter 6B and may be  
10 procured and construction undertaken either independently or  
11 in co-operation with other districts, individuals, or any  
12 federal or state agency or political subdivision.

13 Sec. 42. Section 468.146, subsection 1, Code 2005, is  
14 amended to read as follows:

15 1. When a drainage district is established and a  
16 satisfactory outlet cannot be obtained except through lands in  
17 an adjoining county, or when an improved outlet cannot be  
18 obtained except through lands downstream from the district  
19 boundary, the board shall have the power to purchase a right  
20 of way, to construct and maintain such outlets, and to pay all  
21 necessary costs and expenses out of the district funds. The  
22 board shall have similar authority relative to the  
23 construction and maintenance of silt basins upstream from the  
24 district boundary. In case the board and the owners of the  
25 land required for such outlet or silt basin cannot agree upon  
26 the price to be paid as compensation for the land taken or  
27 used, the board is hereby empowered to exercise the right of  
28 eminent domain as provided for in chapter 6B in order to  
29 procure such necessary right of way.

30 Sec. 43. Section 468.366, Code 2005, is amended to read as  
31 follows:

32 468.366 SETTLING BASIN -- CONDEMNATION.

33 If, before a district operating a pumping plant is  
34 completed and accepted, it appears that portions of the lands  
35 within said district are wet or nonproductive by reason of the

1 floods or overflow waters from one or more streams running  
2 into, through, or along said district and that said district  
3 or some other district of which such district shall have  
4 formed a part, shall have provided a settling basin to care  
5 for the said floods and overflow waters of said stream or  
6 watercourse, but no channel to said settling basin has been  
7 provided, said board or boards are hereby empowered to lease,  
8 buy, or condemn the necessary lands within or without the  
9 district for such channel. Proceedings to condemn shall be as  
10 provided in chapter 6B for the exercise of the right of  
11 eminent domain.

12 Sec. 44. CODE EDITOR DIRECTIVE.

13 1. The Code editor is directed to make the following  
14 transfers:

15 a. Section 6B.10 to become subsection 2 of section 6B.9.

16 b. Section 6B.20 to become subsection 4 of section 6B.18.

17 c. Section 6B.27 to become subsection 2 of section 6B.26.

18 d. Sections 6B.39 and 6B.41 to become subsections 3 and 4,  
19 respectively, of section 6B.38.

20 e. Section 6B.43 to become unnumbered paragraph 3 of  
21 section 6B.4.

22 f. Sections 6B.47 through 6B.51 to become subsections 2  
23 through 6, respectively, of section 6B.46.

24 g. Section 6B.58 to become subsection 2 of section 6B.1.

25 2. The Code editor is directed to correct internal  
26 references in the Code as necessary due to enactment of this  
27 section.

28 Sec. 45. Section 6B.4A, Code 2005, is repealed.

29 Sec. 46. EFFECTIVE AND APPLICABILITY DATES.

30 1. The section of this Act enacting section 422.73,  
31 subsection 3, being deemed of immediate importance, takes  
32 effect upon enactment and applies to reacquisitions of  
33 property occurring on or after the effective date of this Act.

34 2. The sections of this Act enacting section 422.7,  
35 subsection 45, and section 422.35, subsection 22, apply

1 retroactively to January 1, 2006, for tax years beginning on  
2 or after that date.

3 3. The remainder of this Act, being deemed of immediate  
4 importance, takes effect upon enactment and applies to  
5 condemnation actions initiated on or after the effective date  
6 of this Act.

7  
8

**HOUSE FILE 2351**

**S-5129**

1 Amend the amendment, S-5118, to House File 2351, as  
2 amended passed, and reprinted by the House, as  
3 follows:

4 1. By striking page 2, line 27, through page 3,  
5 line 6, and inserting the following:

6 ""(1) An acquiring agency considering the use of  
7 eminent domain authority to acquire property as part  
8 of a project to construct a lake shall conduct a  
9 review of prudent and feasible alternatives to such  
10 lake development prior to a determination that such  
11 lake development is reasonable and necessary. If  
12 property is acquired by condemnation as part of a  
13 project to construct a lake, such property, during the  
14 useful life of the lake, shall not be transferred by  
15 the acquiring agency to a private party other than the  
16 prior owner from whom the property was acquired or a  
17 successor in interest to the prior owner.""

**By JEFF ANGELO**

**S-5129 FILED MARCH 28, 2006**

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HOUSE FILE 2351

S-5118

1 Amend House File 2351, as amended, passed, and  
2 reprinted by the House, as follows:

3 1. Page 2, lines 4 and 5, by striking the words  
4 "utilities or persons" and inserting the following:  
5 "utilities, ~~or~~ persons, companies, or corporations".

6 2. Page 2, line 29, by inserting after the word  
7 "property" the following: "for redevelopment purposes  
8 or to eliminate slum or blighted conditions".

9 3. Page 2, line 35, by striking the words "city  
10 or county" and inserting the following:  
11 "municipality".

12 4. Page 3, by striking lines 1 through 3 and  
13 inserting the following: "public input, if seventy-  
14 five percent or more of the area included in the plan  
15 consists of property in a slum or blighted".

16 5. Page 3, line 6, by inserting after the word  
17 "municipality." the following: "The project or  
18 acquisition plan area shall only include the adjacent  
19 and contiguous parcels necessary for the completion of  
20 a specific project that consists of the construction  
21 of a new building, repair and rehabilitation of  
22 buildings, and associated uses for a specific business  
23 or housing project. Before a municipality exercises  
24 its eminent domain authority to acquire properties in  
25 a project or acquisition plan area that are not in a  
26 slum or blighted condition, the municipality shall be  
27 required to adopt a resolution by a two-thirds  
28 majority to authorize the acquisition of such property  
29 by eminent domain. The resolution shall make a  
30 finding that includes at a minimum all of the  
31 following:

32 (a) The taking of such property is necessary to  
33 achieve the project or acquisition plan objectives.

34 (b) The taking of property for the project or  
35 acquisition plan will eliminate or rehabilitate the  
36 slum and blighted conditions in the remainder of the  
37 area.

38 (c) The proposed project or acquisition plan will  
39 confer significant economic benefits upon the  
40 municipality."

41 6. Page 3, by striking lines 7 through 10.

42 7. Page 3, by striking lines 11 through 14 and  
43 inserting the following:

44 "For purposes of this subparagraph (5):

45 (a) "Blighted condition" means the presence of a  
46 substantial number of slum or deteriorated structures;  
47 insanitary or unsafe".

48 8. Page 3, by striking line 24 and inserting the  
49 following:

50 "(b) "Slum condition"."

S-5118

1 9. Page 3, by striking line 32 and inserting the  
2 following: "sanitation; by reason".

3 10. Page 4, by striking line 2 and inserting the  
4 following:

5 "(c) In no case shall".

6 11. Page 4, by inserting after line 4 the  
7 following:

8 "(d) "Project or acquisition plan" means the  
9 planned activities of a municipality to eliminate or  
10 rehabilitate slum or blighted conditions and redevelop  
11 specific property in that portion of an urban renewal  
12 area designated as a slum or blighted area pursuant to  
13 chapter 403. The planned activities may include the  
14 sale and acquisition of property; demolition and  
15 removal of buildings and improvements; repair and  
16 rehabilitation of buildings or other improvements; and  
17 installation, construction, or reconstruction of  
18 streets and utilities.

19 (e) "Significant economic benefits" means the  
20 creation of new employment opportunities or the  
21 retention of employment opportunities."

22 12. Page 4, line 11, by striking the words  
23 "development or," and inserting the following:  
24 "development, or".

25 13. Page 4, by striking lines 14 through 19 and  
26 inserting the following:

27 "(1) If private property is to be condemned for  
28 development or creation of a lake, only that number of  
29 acres justified as necessary for a surface drinking  
30 water source, and not otherwise acquired, may be  
31 condemned. In addition, the acquiring agency shall  
32 conduct a review of prudent and feasible alternatives  
33 to provision of a drinking water source prior to  
34 making a determination that such lake development or  
35 creation is reasonable and necessary. Development or  
36 creation of a lake as a surface drinking water source  
37 includes all of the following:

38 (a) Construction of the dam, including sites for  
39 suitable borrow material and the auxiliary spillway.

40 (b) The water supply pool.

41 (c) The sediment pool.

42 (d) The flood control pool.

43 (e) The floodwater retarding pool.

44 (f) The surrounding area upstream of the dam no  
45 higher in elevation than the top of the dam's  
46 elevation.

47 (g) The appropriate setback distance required by  
48 state or federal laws and regulations to protect  
49 drinking water supply.

50 For purposes of this subparagraph (1), "number of

1 acres justified as necessary for a surface drinking  
2 water source" means according to guidelines of the  
3 United States natural resource conservation service  
4 and according to analyses of surface drinking water  
5 capacity needs conducted by one or more registered  
6 professional engineers."

7 14. Page 4, by striking lines 20 through 24.

8 15. Page 4, by striking lines 25 through 27.

9 16. Page 5, line 6, by inserting after the word  
10 "action." the following: "This subparagraph does not  
11 apply if both of the following conditions are met:

12 (a) The property to be acquired is for an  
13 improvement to an existing airport, airport system, or  
14 aviation facilities if such improvement is required by  
15 federal law, regulation, or order or if such  
16 improvement is included in an airport layout plan  
17 approved by the federal aviation administration for  
18 the existing site of the airport, airport system, or  
19 aviation facilities.

20 (b) The property to be condemned has been zoned by  
21 a city or county for use as an airport, airport  
22 system, or aviation facilities."

23 17. By striking page 5, line 7, through page 7,  
24 line 13.

25 18. Page 7, by inserting before line 14 the  
26 following:

27 "Sec. \_\_\_\_ . NEW SECTION. 6A.23 JUDICIAL REVIEW OF  
28 EMINENT DOMAIN AUTHORITY.

29 1. An owner of property described in an  
30 application for condemnation may bring an action  
31 challenging the exercise of eminent domain authority  
32 or the condemnation proceedings. Such action shall be  
33 commenced within thirty days after service of notice  
34 of condemnation pursuant to section 6B.3 by the filing  
35 of a petition in district court. Service of the  
36 original notice upon the acquiring agency shall be as  
37 required in the rules of civil procedure. A property  
38 owner or a party in possession of the property under a  
39 recorded lease or contract shall be the only parties  
40 with standing to bring such action.

41 2. An acquiring agency that proposes to acquire  
42 property by eminent domain may file a petition in  
43 district court seeking a determination and declaration  
44 that its finding of public use, public purpose, or  
45 public improvement necessary to support the taking  
46 meets the definition of those terms. The action shall  
47 be commenced by the filing of a petition identifying  
48 all property owners whose property is proposed to be  
49 acquired and parties in possession of such property  
50 under a recorded lease or contract, and including a

1 description of the properties proposed to be acquired  
2 and a statement of the public use, public purpose, or  
3 public improvement supporting the acquisition of the  
4 property by eminent domain. The original notice shall  
5 be served as required by the rules of civil procedure  
6 on each property owner named in the petition and on  
7 parties in possession of such property. Such action  
8 may be commenced by an acquiring agency at any time  
9 prior to the filing of an application for condemnation  
10 pursuant to section 6B.3.

11 3. For any action brought under this section, the  
12 burden of proof shall be on the acquiring agency to  
13 prove by a preponderance of the evidence that the  
14 finding of public use, public purpose, or public  
15 improvement meets the definition of those terms. If a  
16 property owner or party in possession under a recorded  
17 lease or contract prevails in an action brought under  
18 this section, the acquiring agency shall be required  
19 to pay the costs, including reasonable attorney fees,  
20 of the adverse party."

21 19. Page 7, line 34, by striking the words "may  
22 offer" and inserting the following: "may make".

23 20. Page 8, line 1, by striking the word "twenty-  
24 five" and inserting the following: "thirty".

25 21. Page 8, line 11, by inserting after the  
26 figure "6B.54." the following: "The option to make an  
27 alternative purchase offer does not apply when  
28 property is being acquired for street and highway  
29 projects undertaken by the state, a county, or a  
30 city."

31 22. Page 8, by inserting after line 11 the  
32 following:

33 "Sec. \_\_\_\_ . NEW SECTION. 6B.2D NOTICE OF INTENT  
34 TO APPROVE ACQUISITION OF PROPERTY BY EMINENT DOMAIN.

35 1. The acquiring agency shall send notice of a  
36 proposed resolution, motion, or other document  
37 authorizing acquisition of property by eminent domain  
38 to each property owner and party in possession of the  
39 property under a recorded lease or contract whose  
40 property is proposed to be acquired by eminent domain  
41 at least fourteen days prior to the date of the  
42 meeting at which such proposed authorization will be  
43 considered for adoption by the acquiring agency. The  
44 notice shall include the date, time, and place of the  
45 meeting and a statement that the persons receiving the  
46 notice have a right to attend the meeting and to voice  
47 objection to the proposed acquisition of the property.  
48 The notice shall include a copy of the proposed  
49 resolution, motion, or other document authorizing  
50 acquisition by eminent domain.

1 2. This section shall not apply to the following:

2 a. Street and highway projects undertaken by the  
3 state, a county, or a city.

4 b. Projects undertaken by a municipal utility.

5 c. Projects undertaken by a city enterprise  
6 providing services of sewer systems, storm water  
7 drainage systems, sewage treatment, solid waste  
8 collection, or solid waste disposal.

9 d. Projects undertaken by a county enterprise  
10 providing services described in section 331.461,  
11 subsection 2, paragraphs "b" and "f".

12 23. By striking page 8, line 22, through page 9,  
13 line 1.

14 24. Page 9, by striking lines 22 through 25 and  
15 inserting the following: "is situated as provided in  
16 section 6A.23."

17 25. Page 10, by striking lines 17 through 24 and  
18 inserting the following: "may deliberate in closed  
19 session. When deliberating in closed session, the  
20 meeting is closed to all persons who are not  
21 commissioners except for personnel from the sheriff's  
22 office if such personnel is requested by the  
23 commission. After deliberations commence, the  
24 commission and each commissioner is prohibited from  
25 communicating with any party to the proceeding, unless  
26 such communication occurs in the presence of or with  
27 the consent of the property owner and the other  
28 parties who appeared before the commission. However,  
29 if the commission is deliberating in closed session,  
30 and after deliberations commence the commission  
31 requires further information from a party or a  
32 witness, the commission shall notify the property  
33 owner and the acquiring agency that they are allowed  
34 to attend the meeting at which such additional  
35 information shall be provided but only for that period  
36 of time during which the additional information is  
37 being provided. The property owner and the acquiring  
38 agency shall be given a reasonable opportunity to  
39 attend the meeting. The".

40 26. Page 11, by inserting before line 4 the  
41 following:

42 "Sec. \_\_\_\_ . Section 6B.33, Code 2005, is amended to  
43 read as follows:

44 6B.33 COSTS AND ATTORNEY FEES.

45 The ~~applicant~~ acquiring agency shall pay all costs  
46 of the assessment made by the commissioners and  
47 reasonable attorney fees and costs, including the  
48 reasonable cost of one appraisal, incurred by the  
49 condemnee as determined by the commissioners if the  
50 award of the commissioners exceeds one hundred ten

1 percent of the final offer of the applicant prior to  
2 condemnation. The condemnee shall submit an  
3 application for fees and costs prior to adjournment of  
4 the final meeting of the compensation commission held  
5 on the matter. The applicant acquiring agency shall  
6 file with the sheriff an affidavit setting forth the  
7 most recent offer made to the person whose property is  
8 sought to be condemned. Members of such commissions  
9 shall receive a per diem of two hundred dollars and  
10 actual and necessary expenses incurred in the  
11 performance of their official duties. The applicant  
12 acquiring agency shall reimburse the county sheriff  
13 for the per diem and expense amounts paid by the  
14 sheriff to the members. The applicant acquiring  
15 agency shall reimburse the owner for the expenses the  
16 owner incurred for recording fees, penalty costs for  
17 full or partial prepayment of any preexisting recorded  
18 mortgage entered into in good faith encumbering the  
19 property, and for similar expenses incidental to  
20 conveying the property to the applicant acquiring  
21 agency. The applicant acquiring agency shall also pay  
22 all costs occasioned by the appeal, including  
23 reasonable attorney fees and the reasonable cost  
24 incurred by the property owner for one appraisal to be  
25 taxed by the court, unless on the trial thereof the  
26 same or a lesser amount of damages is awarded than was  
27 allowed by the tribunal from which the appeal was  
28 taken."

29 27. Page 13, line 24, by striking the word  
30 "offer" and inserting the following: "make".

31 28. Page 13, line 26, by striking the word  
32 "twenty-five" and inserting the following: "thirty".

33 29. Page 14, line 2, by inserting after the word  
34 "easement." the following: "The option to make an  
35 alternative purchase offer does not apply when  
36 property is being acquired for street and highway  
37 projects undertaken by the state, a county, or a  
38 city."

39 30. Page 15, by striking lines 18 through 20.

40 31. Page 15, line 35, by striking the word  
41 "twenty-five" and inserting the following: "thirty".

42 32. Page 16, line 5, by inserting after the word  
43 "law." the following: "This subsection does not apply  
44 when property is being acquired for street and highway  
45 projects undertaken by the state, a county, or a  
46 city."

47 33. Page 16, by striking line 25 and inserting  
48 the following: "agency from the prior owner plus  
49 cleanup costs incurred by the acquiring agency,  
50 whichever is less. However, the current appraised

1 value of the real property shall be the purchase price  
2 to be paid by the previous owner if any other amount  
3 would result in a loss of federal funding for projects  
4 funded in whole or in part with federal funds. The  
5 notice".

6 34. By striking page 16, line 29, through page  
7 17, line 18.

8 35. Page 17, by inserting before line 19, the  
9 following:

10 "Sec. \_\_\_\_\_. Section 6B.57, Code 2005, is amended to  
11 read as follows:

12 6B.57 PROCEDURAL COMPLIANCE.

13 If an acquiring agency makes a good faith effort to  
14 serve, send, or provide the notices or documents  
15 required under this chapter to the owner and any  
16 contract purchaser of private property that is or may  
17 be the subject of condemnation, or to a person in  
18 possession of such property by recorded lease if  
19 notices or documents are required to be served, sent,  
20 or provided to such a person, but fails to provide the  
21 notice or documents to the owner and any contract  
22 purchaser, or person in possession if applicable, such  
23 failure shall not constitute grounds for invalidation  
24 of the condemnation proceeding if the chief judge of  
25 the judicial district determines that such failure can  
26 be corrected by delaying the condemnation proceedings  
27 to allow compliance with the requirement or such  
28 failure does not unreasonably prejudice the owner or  
29 any contract purchaser."

30 36. Page 17, by inserting before line 19 the  
31 following:

32 "Sec. \_\_\_\_\_. Section 6B.58, Code 2005, is amended to  
33 read as follows:

34 6B.58 ACQUIRING AGENCY -- DEFINITION.

35 For purposes of this chapter, an "acquiring agency"  
36 means the state of Iowa or any person or entity  
37 conferred the right by statute to condemn private  
38 property or to otherwise exercise the power of eminent  
39 domain. In the exercise of eminent domain power, the  
40 words "applicant" and "condemner" mean acquiring  
41 agency as defined in this section, unless the context  
42 clearly requires otherwise."

43 37. Page 17, by striking lines 20 through 24 and  
44 inserting the following:

45 "Rent shall not be charged to a person in  
46 possession of the property and shall not accrue  
47 against the property owner until all or a portion of  
48 the compensation commission award has been paid to the  
49 condemnee pursuant to section 6B.25."

50 38. By striking page 17, line 30, through page

1 18, line 2, and inserting the following: "to acquire  
2 property shall not exercise such authority over  
3 property located in the unincorporated area of a  
4 county without first presenting the proposal to  
5 acquire such property by eminent domain to the board  
6 of supervisors of each county where the property is  
7 located and such proposal receives the approval, by  
8 resolution, of each applicable board of supervisors.  
9 However, this section does not apply to an entity  
10 created by or on behalf of one or more political  
11 subdivisions if the entity is authorized by statute to  
12 act as a political subdivision and if this section  
13 would limit the ability of the entity to comply with  
14 requirements or limitations imposed by the Internal  
15 Revenue Code to preserve the tax exemption of interest  
16 payable on bonds or obligations of the entity."

17 39. Page 18, line 3, by inserting before the word  
18 "This" the following: "This section does not apply to  
19 a multistate entity created to provide drinking water  
20 that has received or is receiving federal funds."

21 40. Page 18, by striking lines 6 through 16.

22 41. Page 19, by striking lines 4 through 23.

23 42. Page 20, by striking lines 12 and 13, and  
24 inserting the following: "for the following:"

25 43. Page 20, by inserting after line 20 the  
26 following:

27 "e. The operation of a landfill or other solid  
28 waste disposal or processing site."

29 44. Page 20, by inserting after line 20 the  
30 following:

31 "The exceptions provided in paragraphs "a" through  
32 "c" apply only to the extent the city had this power  
33 prior to July 1, 2006."

34 45. By renumbering and correcting internal  
35 references as necessary.

COMMITTEE ON JUDICIARY

KEITH A. KREIMAN, CO-CHAIRPERSON

DAVID MILLER, CO-CHAIRPERSON

**Fiscal Services Division**  
**Legislative Services Agency**  
**Fiscal Note**

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SF 2351 – County Treasurers Omnibus (LSB 5756 SV)

Analyst: Mary Beth Mellick (Phone: [515] 281-8223) ([marybeth.mellick@legis.state.ia.us](mailto:marybeth.mellick@legis.state.ia.us))

Fiscal Note Version – New

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**Description**

Senate File 2351 makes numerous technical changes relating to the duties of county treasurers, including but not limited to the following:

- Permits a firm, association, or corporation that owns vehicles in more than one county to register a vehicle in the county where the primary user of the vehicle is located, rather than in the county of the owner's residence.
- Extends the period of time that a vehicle may be operated pending receipt of registration plates from 45 days to 60 days. The extension applies to the amount of time the county treasurers have to issue the registration and title.
- Effective July 1, 2007, expands the ability of county treasurers to collect certain moneys owed to the State from persons applying for renewal of their vehicle registration. Under current and proposed law, a county treasurer shall refuse to renew the registration of a vehicle registered to a person when notified by the DOT, through the distributed teleprocessing network, that the person has unpaid restitution owed to the county or State. The Bill requires the clerk of court, on a daily basis, to notify the Department of Transportation (DOT) through the Iowa Court Information System (ICIS) of the amount due for restitution under Section 910.1(4), Code of Iowa, including all applicable fees and penalties of persons who owe delinquent restitution. The county treasurer may then collect the restitution for the clerk of court. Upon payment of the restitution and applicable fees and penalties, the county treasurer may issue the vehicle registration. On a monthly basis, the county treasurer is to forward all restitution funds collected to the Department of Revenue (DOR). The Department will then disburse the funds to the clerk of court.
- Requires the Iowa State County Treasurers Association to establish, pursuant to a statewide study to be completed by December 31, 2006, an administrative fee to be charged by all county treasurers for collection of restitution or other debt collected by the treasurer from a person renewing a vehicle registration.
- Effective January 1, 2007, permits prorated refunds of vehicle registration fees for travel trailers and fifth-wheel travel trailers when the vehicles are sold.
- Changes from \$10 to \$20 the fee collected by county treasurers for issuance of a tax sale certificate and strikes the \$10 fee collected for issuance of a certificate of redemption from tax sale. This provision takes effect upon enactment and applies to parcels sold at tax sales held on or after June 1, 2006.
- Allows a county treasurer's office that issues driver's licenses to create a deputy position for the person in charge of driver's license issuance.
- Provides that a county may adopt an ordinance providing for a public nuisance tax sale held on the same day as the annual tax sale. Parcels with delinquent taxes that may be offered for sale are abandoned property and are assessed as residential property or commercial multifamily housing property, and the county or city has declared that the parcel is, or is likely to become, a public nuisance, and that the parcel is suitable for use as housing following rehabilitation.

- Adds conditions that make certain mobile homes and manufactured homes "valueless."
- Allows the owner of a manufactured home community or mobile home park to obtain a junking certificate for a valueless home prior to disposal of the home.
- Sections 11, 12, and 13 take effect January 1, 2007. Sections 4, 5, 6, and 17 take effect July 1, 2007.

### **Assumptions**

All assumptions are based on Section 7 of the Bill, which expands the ability of county treasurers to collect certain moneys owed to the State from persons applying for renewal of their vehicle registration.

1. The Judicial Branch's Iowa Court Information System (ICIS) would need to be modified to include the amount due for persons who owe restitution. In addition, programming changes would be required to the ICIS, the Vehicle Registration System utilized by the DOT and county treasurers, and the Department of Revenue's computer system, so that restitution data can be exchanged between the three agencies.
2. There may be a delay from the time that payment is collected by the county treasurer for restitution to the time it is submitted to the Department of Revenue. As a result, the clerk of court may attempt to collect restitution when the debt has already been paid.
3. The DOT's Office of Vehicle Services and a County Treasurer User Acceptance Team would incur additional hours for testing of the programming changes.
4. An additional 2.0 Judicial Branch FTE positions would be required to implement the changes to the ICIS, and for on-going maintenance of the System.

### **Fiscal Impact**

The estimated fiscal impact of SF 2351 is as follows:

#### **County Treasurers – Counties' General Fund**

Minimal fiscal impact to counties' General Fund, including the provision that changes from \$10 to \$20 the fee collected by county treasurers for the issuance of a tax sale certificate and strikes the \$10 fee collected for issuance of a certificate of redemption from tax sale.

In regard to the provisions that allow county treasurers to collect unpaid restitution, a County Treasurer User Acceptance Team will be needed to test the programming changes to the Vehicle Registration System; however, the fiscal impact is anticipated to be minimal. There are typically two county treasurers that participate on a User Acceptance Team.

#### **Judicial Branch – State General Fund**

##### **FY 2007 and Subsequent Fiscal Years:**

- **Programming Costs:** A one-time cost to the State General Fund of \$485,000 for programming changes to the Iowa Court Information System (ICIS). The costs would be incurred over multiple fiscal years; however, the number of fiscal years is unknown.
- **FTE Positions:** An annual cost to the State General Fund of between \$120,000 and \$150,000 for 2.0 FTE positions required to implement and maintain the changes to the Iowa Court Information System.

**Department of Transportation – Road Use Tax and Primary Road Funds**

FY 2007: A one-time cost of \$151,000 for 1,600 programming hours. Of the total cost, 95.0% (\$142,500) would be paid from the Road Use Tax Fund and 5.0% (\$7,500) from the Primary Road Fund. The cost does not include user acceptance testing hours for the Office of Vehicle Services. These costs are unknown but are anticipated to be minimal.

**Department of Revenue – State General Fund**

No fiscal impact. Programming hours would be incurred using current staff and resources.

**Sources**

Iowa State Association of Counties  
Polk County Treasurer's Office  
Department of Transportation  
Department of Revenue  
Judicial Branch

/s/ Holly M. Lyons

March 22, 2006

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The fiscal note and correctional impact statement for this bill was prepared pursuant to Joint Rule 17 and pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Fiscal Services Division, Legislative Services Agency to members of the Legislature upon request.

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S-5166

1 Amend House File 2351, as amended, passed, and  
2 reprinted by the House, as follows:

3 1. Page 2, lines 4 and 5, by striking the words  
4 "utilities or persons" and inserting the following:  
5 "utilities, ~~or~~ persons, companies, or corporations".

6 2. Page 2, line 29, by inserting after the word  
7 "property" the following: "for redevelopment purposes  
8 and to eliminate slum or blighted conditions".

9 3. Page 2, line 35, by striking the words "city  
10 or county" and inserting the following:  
11 "municipality".

12 4. Page 3, by striking lines 1 through 3 and  
13 inserting the following: "public input, if seventy-  
14 five percent or more of the area included in the plan  
15 consists of property in a slum or blighted".

16 5. Page 3, line 6, by inserting after the word  
17 "municipality." the following: "The project or  
18 acquisition plan area shall only include the adjacent  
19 and contiguous parcels necessary for the completion of  
20 planned activities for a specific business or housing  
21 project. Before a municipality exercises its eminent  
22 domain authority to acquire properties in a project or  
23 acquisition plan area that are not in a slum or  
24 blighted condition, the municipality shall be required  
25 to adopt a resolution by a two-thirds majority to  
26 authorize the acquisition of such property by eminent  
27 domain. The resolution shall make a finding that  
28 includes at a minimum all of the following:

29 (a) The taking of such property is necessary to  
30 achieve the project or acquisition plan objectives.

31 (b) The taking of property for the project or  
32 acquisition plan will eliminate or rehabilitate the  
33 slum and blighted conditions in the area.

34 (c) If the specific project is for a business, the  
35 proposed project or acquisition plan will confer  
36 economic benefits upon the municipality."

37 6. Page 3, by striking lines 7 through 10.

38 7. Page 3, by striking lines 11 through 14 and  
39 inserting the following:

40 "For purposes of this subparagraph (5):

41 (a) "Blighted condition" means the presence of a  
42 substantial number of slum or deteriorated structures;  
43 insanitary or unsafe".

44 8. Page 3, by striking line 24 and inserting the  
45 following:

46 "(b) "Slum condition"."

47 9. Page 3, by striking line 32 and inserting the  
48 following: "sanitation; by reason".

49 10. Page 4, by striking line 2 and inserting the  
50 following:

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1 "(c) In no case shall".

2 11. Page 4, by inserting after line 4 the  
3 following:

4 "(d) "Project or acquisition plan" means the  
5 planned activities of a municipality to rehabilitate  
6 or redevelop specific property in that portion of an  
7 urban renewal area designated as a slum or blighted  
8 area pursuant to chapter 403. The planned activities  
9 may include the sale and acquisition of property;  
10 demolition and removal of buildings and improvements;  
11 construction, repair, and rehabilitation of buildings  
12 or other improvements; and installation, construction,  
13 or reconstruction of streets and utilities.

14 (e) "Economic benefits" means the creation of new  
15 employment opportunities or the retention of  
16 employment opportunities."

17 12. Page 4, line 11, by striking the words  
18 "development or," and inserting the following:  
19 "development, or".

20 13. Page 4, by striking lines 14 through 19 and  
21 inserting the following:

22 "(1) If private property is to be condemned for  
23 development or creation of a lake, only that number of  
24 acres justified as necessary for a surface drinking  
25 water source, and not otherwise acquired, may be  
26 condemned. In addition, the acquiring agency shall  
27 conduct a review of prudent and feasible alternatives  
28 to provision of a drinking water source prior to  
29 making a determination that such lake development or  
30 creation is reasonable and necessary. Development or  
31 creation of a lake as a surface drinking water source  
32 includes all of the following:

33 (a) Construction of the dam, including sites for  
34 suitable borrow material and the auxiliary spillway.

35 (b) The water supply pool.

36 (c) The sediment pool.

37 (d) The flood control pool.

38 (e) The floodwater retarding pool.

39 (f) The surrounding area upstream of the dam no  
40 higher in elevation than the top of the dam's  
41 elevation.

42 (g) The appropriate setback distance required by  
43 state or federal laws and regulations to protect  
44 drinking water supply.

45 For purposes of this subparagraph (1), "number of  
46 acres justified as necessary for a surface drinking  
47 water source" means according to guidelines of the  
48 United States natural resource conservation service  
49 and according to analyses of surface drinking water  
50 capacity needs conducted by one or more registered

1 professional engineers."

2 14. Page 4, by striking lines 20 through 24.

3 15. Page 4, by striking lines 25 through 27.

4 16. Page 5, line 6, by inserting after the word  
5 "action." the following: "This subparagraph does not  
6 apply if any of the following conditions is met:

7 (a) The property to be condemned is for an  
8 improvement to an existing airport, airport system, or  
9 aviation facilities if such improvement is required by  
10 federal law, regulation, or order or if such  
11 improvement is included in an airport layout plan  
12 approved by the federal aviation administration for  
13 the existing site of the airport, airport system, or  
14 aviation facilities.

15 (b) The property to be condemned has been zoned by  
16 a city or county for use as an airport, airport  
17 system, or aviation facilities.

18 (c) The property to be condemned is for a proposed  
19 airport, airport system, or aviation facilities that  
20 as of July 1, 2006, was designated in the federal  
21 aviation administration national plan for integrated  
22 airport services, and the property to be condemned is  
23 located within the county where at least one of the  
24 cities that will participate in operation of the  
25 proposed airport, airport system, or aviation  
26 facilities is located."

27 17. By striking page 5, line 7, through page 7,  
28 line 13.

29 18. Page 7, by inserting before line 14 the  
30 following:

31 "Sec. \_\_\_\_ . NEW SECTION. 6A.22A EXCEPTION FOR  
32 CERTAIN URBAN RENEWAL AREAS.

33 1. The requirement in section 6A.22, subsection 2,  
34 paragraph "a", subparagraph (5), that eminent domain  
35 authority be exercised on a parcel-by-parcel basis and  
36 the exception in that subparagraph (5) for project or  
37 acquisition plans with seventy-five percent or more of  
38 the area consisting of property in a slum or blighted  
39 condition, take effect October 1, 2006. However, if  
40 an acquiring agency adopts a resolution after the date  
41 of enactment of this Act but before October 1, 2006,  
42 approving acquisition of property by eminent domain in  
43 that portion of an urban renewal area designated as a  
44 slum or blighted area, such requirement or exception  
45 shall not apply to any condemnation application  
46 seeking to condemn that property if the application is  
47 filed before October 1, 2007, with the chief judge of  
48 the judicial district of the county in which the  
49 property is located.

50 2. This section is repealed December 31, 2007."

1 19. Page 7, by inserting before line 14 the  
2 following:  
3 "Sec. \_\_\_\_ . NEW SECTION. 6A.23 JUDICIAL REVIEW OF  
4 EMINENT DOMAIN AUTHORITY.

5 1. An owner of property described in an  
6 application for condemnation may bring an action  
7 challenging the exercise of eminent domain authority  
8 or the condemnation proceedings. Such action shall be  
9 commenced within thirty days after service of notice  
10 of assessment pursuant to section 6B.8 by the filing  
11 of a petition in district court. Service of the  
12 original notice upon the acquiring agency shall be as  
13 required in the rules of civil procedure. In addition  
14 to the owner of the property, a contract purchaser of  
15 record of the property or a tenant occupying the  
16 property under a recorded lease shall also have  
17 standing to bring such action.

18 .2. An acquiring agency that proposes to acquire  
19 property by eminent domain may file a petition in  
20 district court seeking a determination and declaration  
21 that its finding of public use, public purpose, or  
22 public improvement necessary to support the taking  
23 meets the definition of those terms. The action shall  
24 be commenced by the filing of a petition identifying  
25 all property owners whose property is proposed to be  
26 acquired, any contract purchaser of record of the  
27 property, and any tenant known to be occupying the  
28 property, and including a description of the  
29 properties proposed to be acquired and a statement of  
30 the public use, public purpose, or public improvement  
31 supporting the acquisition of the property by eminent  
32 domain. The original notice shall be served as  
33 required by the rules of civil procedure on each  
34 property owner named in the petition and on any  
35 contract purchaser of record of the property and on  
36 any tenant occupying the property under a recorded  
37 lease. Such action may be commenced by an acquiring  
38 agency at any time prior to the filing of an  
39 application for condemnation pursuant to section 6B.3.

40 3. For any action brought under this section, the  
41 burden of proof shall be on the acquiring agency to  
42 prove by a preponderance of the evidence that the  
43 finding of public use, public purpose, or public  
44 improvement meets the definition of those terms. If a  
45 property owner or a contract purchaser of record or a  
46 tenant occupying the property under a recorded lease  
47 prevails in an action brought under this section, the  
48 acquiring agency shall be required to pay the costs,  
49 including reasonable attorney fees, of the adverse  
50 party."

- 1 20. Page 7, line 34, by striking the words "may  
2 offer" and inserting the following: "may make".
- 3 21. Page 8, line 1, by striking the word "twenty-  
4 five" and inserting the following: "thirty".
- 5 22. Page 8, line 11, by inserting after the  
6 figure "6B.54." the following: "The option to make an  
7 alternative purchase offer does not apply when  
8 property is being acquired for street and highway  
9 projects undertaken by the state, a county, or a  
10 city."
- 11 23. Page 8, by inserting after line 11 the  
12 following:
- 13 "Sec. \_\_\_\_ . NEW SECTION. 6B.2D NOTICE OF INTENT  
14 TO APPROVE ACQUISITION OF PROPERTY BY EMINENT DOMAIN.
- 15 1. The acquiring agency shall send notice of a  
16 proposed resolution, motion, or other document  
17 authorizing acquisition of property by eminent domain  
18 to each property owner whose property is proposed to  
19 be acquired by eminent domain, to any contract  
20 purchaser of record of the property, and to any tenant  
21 known to be occupying the property at least fourteen  
22 days prior to the date of the meeting at which such  
23 proposed authorization will be considered for adoption  
24 by the acquiring agency. The notice shall include the  
25 date, time, and place of the meeting and a statement  
26 that the persons receiving the notice have a right to  
27 attend the meeting and to voice objection to the  
28 proposed acquisition of the property. The notice  
29 shall include a copy of the proposed resolution,  
30 motion, or other document authorizing acquisition by  
31 eminent domain. The notice shall also include the  
32 same statement of individual rights that is required  
33 by section 6B.2A.
- 34 2. This section shall not apply to the following:
- 35 a. Street and highway projects undertaken by the  
36 state, a county, or a city.
- 37 b. Projects undertaken by a municipal utility.
- 38 c. Projects undertaken by a city enterprise  
39 providing services of sewer systems, storm water  
40 drainage systems, sewage treatment, solid waste  
41 collection, or solid waste disposal.
- 42 d. Projects undertaken by a county enterprise  
43 providing services described in section 331.461,  
44 subsection 2, paragraphs "b" and "f".
- 45 24. By striking page 8, line 22, through page 9,  
46 line 1.
- 47 25. Page 9, by inserting before line 2 the  
48 following:
- 49 "Sec. \_\_\_\_ . Section 6B.3, subsection 2, Code 2005,  
50 is amended to read as follows:

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

15 In lieu of mailing and publishing the application,  
16 the applicant may cause the application to be served  
17 upon the owner, contract purchaser of record, tenant  
18 known to be occupying the property, record  
19 lienholders, and record encumbrancers of the property  
20 in the manner provided by the Iowa rules of civil  
21 procedure for the personal service of original notice.  
22 The application shall be mailed and published or  
23 served, as above provided, prior to or  
24 contemporaneously with the mailing and publication or  
25 service of the list of compensation commissioners as  
26 provided in section 6B.4."

27 26. Page 9, by striking lines 22 through 25 and  
28 inserting the following: "is situated as provided in  
29 section 6A.23."

30 27. Page 10, by striking lines 17 through 24 and  
31 inserting the following: "may deliberate in closed  
32 session. When deliberating in closed session, the  
33 meeting is closed to all persons who are not  
34 commissioners except for personnel from the sheriff's  
35 office if such personnel is requested by the  
36 commission. After deliberations commence, the  
37 commission and each commissioner is prohibited from  
38 communicating with any party to the proceeding, unless  
39 such communication occurs in the presence of or with  
40 the consent of the property owner and the other  
41 parties who appeared before the commission. However,  
42 if the commission is deliberating in closed session,  
43 and after deliberations commence the commission  
44 requires further information from a party or a  
45 witness, the commission shall notify the property  
46 owner and the acquiring agency that they are allowed  
47 to attend the meeting at which such additional  
48 information shall be provided but only for that period  
49 of time during which the additional information is  
50 being provided. The property owner and the acquiring

1 agency shall be given a reasonable opportunity to  
2 attend the meeting. The".

3 28. Page 11, by inserting before line 4 the  
4 following:

5 "Sec. \_\_\_\_ Section 6B.33, Code 2005, is amended to  
6 read as follows:

7 6B.33 COSTS AND ATTORNEY FEES.

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

42 29. Page 11, line 28, by striking the word  
43 "commissioners" and inserting the following:  
44 "acquiring agency".

45 30. Page 13, line 24, by striking the word  
46 "offer" and inserting the following: "make".

47 31. Page 13, line 26, by striking the word  
48 "twenty-five" and inserting the following: "thirty".

49 32. Page 14, line 2, by inserting after the word  
50 "easement." the following: "The option to make an

1 alternative purchase offer does not apply when  
2 property is being acquired for street and highway  
3 projects undertaken by the state, a county, or a  
4 city."

5 33. Page 15, by striking lines 18 through 20.

6 34. Page 15, line 35, by striking the word  
7 "twenty-five" and inserting the following: "thirty".

8 35. Page 16, line 5, by inserting after the word  
9 "law." the following: "This subsection does not apply  
10 when property is being acquired for street and highway  
11 projects undertaken by the state, a county, or a  
12 city."

13 36. Page 16, by inserting after line 13 the  
14 following:

15 "Sec. \_\_\_\_ . Section 6B.56, subsection 1, Code 2005,  
16 is amended to read as follows:

17 1. If real property condemned pursuant to this  
18 chapter is not used for the purpose stated in the  
19 application filed pursuant to section 6B.3 and the  
20 ~~condemner~~ acquiring agency seeks to dispose of the  
21 real property, the ~~condemner~~ acquiring agency shall  
22 first offer the property for sale to the prior owner  
23 of the condemned property as provided in this section.  
24 If real property condemned pursuant to this chapter is  
25 used for the purpose stated in the application filed  
26 pursuant to section 6B.3 and the acquiring agency  
27 seeks to dispose of the real property by sale to a  
28 private person or entity within five years after  
29 acquisition of the property, the acquiring agency  
30 shall first offer the property for sale to the prior  
31 owner of the condemned property as provided in this  
32 section. For purposes of this section, the prior  
33 owner of the real property includes the successor in  
34 interest of the real property."

35 37. Page 16, line 17, by striking the word  
36 "condemner" and inserting the following: "~~condemner~~  
37 acquiring agency".

38 38. Page 16, line 18, by striking the word  
39 "condemner's" and inserting the following:  
40 "~~condemner's~~ acquiring agency's".

41 39. Page 16, by striking line 25 and inserting  
42 the following: "agency from the prior owner plus  
43 cleanup costs incurred by the acquiring agency,  
44 whichever is less. However, the current appraised  
45 value of the real property shall be the purchase price  
46 to be paid by the previous owner if any other amount  
47 would result in a loss of federal funding for projects  
48 funded in whole or in part with federal funds. The  
49 notice".

50 40. Page 16, line 26, by striking the word

1 "condemner" and inserting the following: "~~condemner~~  
2 acquiring agency".

3 41. Page 16, by inserting after line 28 the  
4 following:

5 "Sec. \_\_\_\_\_. Section 6B.56, subsection 3, Code 2005,  
6 is amended to read as follows:

7 3. If the prior owner elects to purchase the real  
8 property at the price established in subsection 2,  
9 before the expiration of the sixty-day period, the  
10 prior owner shall notify the ~~condemner~~ acquiring  
11 agency in writing of this intention and file a copy of  
12 this notice with the office of the recorder in the  
13 county in which the real property is located."

14 42. Page 16, by inserting after line 28 the  
15 following:

16 "For purposes of this subsection, "cleanup costs"  
17 means costs incurred to abate a nuisance or a public  
18 nuisance as those terms are defined in chapters 657  
19 and 657A and costs incurred to recycle and remediate  
20 land pursuant to chapter 455H."

21 43. By striking page 16, line 29, through page  
22 17, line 18.

23 44. Page 17, by inserting before line 19 the  
24 following:

25 "Sec. \_\_\_\_\_. NEW SECTION. 6B.56A DISPOSITION OF  
26 CONDEMNED PROPERTY -- FIVE-YEAR TIME PERIOD.

27 1. When five years have elapsed since property was  
28 condemned and the property has not been used for the  
29 purpose stated in the application filed pursuant to  
30 section 6B.3, and the acquiring agency has not taken  
31 action to dispose of the property pursuant to section  
32 6B.56, the acquiring agency shall, within sixty days,  
33 adopt a resolution reaffirming the purpose for which  
34 the property will be used or offering the property for  
35 sale to the prior owner at a price as provided in  
36 section 6B.56. If the resolution adopted approves an  
37 offer of sale to the prior owner, the offer shall be  
38 made in writing and mailed by certified mail to the  
39 prior owner. The prior owner has one hundred eighty  
40 days after the offer is mailed to purchase the  
41 property from the acquiring agency.

42 2. If the acquiring agency has not adopted a  
43 resolution described in subsection 1 within the sixty-  
44 day time period, the prior owner may, in writing,  
45 petition the acquiring agency to offer the property  
46 for sale to the prior owner at a price as provided in  
47 section 6B.56. Within sixty days after receipt of  
48 such a petition, the acquiring agency shall adopt a  
49 resolution described in subsection 1. If the  
50 acquiring agency does not adopt such a resolution

1 within sixty days after receipt of the petition, the  
2 acquiring agency is deemed to have offered the  
3 property for sale to the prior owner.

4 3. The acquiring agency shall give written notice  
5 to the owner of the right to purchase the property  
6 under this section at the time damages are paid to the  
7 owner.

8 4. This section does not apply to property  
9 acquired for street and highway projects undertaken by  
10 the state, a county, or a city."

11 45. Page 17, by inserting before line 19, the  
12 following:

13 "Sec. \_\_\_\_\_. Section 6B.57, Code 2005, is amended to  
14 read as follows:

15 6B.57 PROCEDURAL COMPLIANCE.

16 If an acquiring agency makes a good faith effort to  
17 serve, send, or provide the notices or documents  
18 required under this chapter to the owner and any  
19 contract purchaser of private property that is or may  
20 be the subject of condemnation, or to any tenant known  
21 to be occupying such property if notices or documents  
22 are required to be served, sent, or provided to such a  
23 person, but fails to provide the notice or documents  
24 to the owner and any contract purchaser, or to any  
25 tenant known to be occupying the property if  
26 applicable, such failure shall not constitute grounds  
27 for invalidation of the condemnation proceeding if the  
28 chief judge of the judicial district determines that  
29 such failure can be corrected by delaying the  
30 condemnation proceedings to allow compliance with the  
31 requirement or such failure does not unreasonably  
32 prejudice the owner or any contract purchaser."

33 46. Page 17, by inserting before line 19 the  
34 following:

35 "Sec. \_\_\_\_\_. Section 6B.58, Code 2005, is amended to  
36 read as follows:

37 6B.58 ACQUIRING AGENCY -- DEFINITION.

38 For purposes of this chapter, an "acquiring agency"  
39 means the state of Iowa or any person or entity  
40 conferred the right by statute to condemn private  
41 property or to otherwise exercise the power of eminent  
42 domain. In the exercise of eminent domain power, the  
43 words "applicant" and "condemner" mean acquiring  
44 agency as defined in this section, unless the context  
45 clearly requires otherwise."

46 47. Page 17, by striking lines 20 through 24 and  
47 inserting the following:

48 "Rent shall not be charged to a person in  
49 possession of the property and shall not accrue  
50 against the property owner until all or a portion of

1 the compensation commission award has been paid to the  
2 condemnee pursuant to section 6B.25."

3 48. By striking page 17, line 30, through page  
4 18, line 2, and inserting the following: "to acquire  
5 property shall not exercise such authority outside the  
6 jurisdictional limits of the political subdivisions  
7 participating in the entity at the time of such  
8 exercise of authority without first presenting the  
9 proposal to acquire such property by eminent domain to  
10 the board of supervisors of each county where the  
11 property is located and such proposal receives the  
12 approval, by resolution, of each applicable board of  
13 supervisors. However, this section does not apply to  
14 an entity created by or on behalf of one or more  
15 political subdivisions if the entity is authorized by  
16 statute to act as a political subdivision and if this  
17 section would limit the ability of the entity to  
18 comply with requirements or limitations imposed by the  
19 Internal Revenue Code to preserve the tax exemption of  
20 interest payable on bonds or obligations of the entity  
21 acting as a political subdivision."

22 49. Page 18, line 5, by inserting after the word  
23 and figure "chapter 476A." the following: "This  
24 section does not apply to property condemned by or on  
25 behalf of a multistate entity created to provide  
26 drinking water that has received or is receiving  
27 federal funds, but only if such property is to be  
28 acquired for water transmission and service lines,  
29 pump stations, water storage tanks, meter houses and  
30 vaults, related appurtenances, or supporting  
31 utilities."

32 50. Page 18, by striking lines 6 through 16.

33 51. Page 19, by striking lines 4 through 23.

34 52. Page 20, by striking lines 12 and 13, and  
35 inserting the following: "for the following:"

36 53. Page 20, by inserting after line 20 the  
37 following:

38 "e. The operation of a landfill or other solid  
39 waste disposal or processing site."

40 54. Page 20, by inserting after line 20 the  
41 following:

42 "\_\_\_ . The use of property for public streets and  
43 highways."

44 55. Page 20, by inserting after line 20 the  
45 following:

46 "\_\_\_ . The operation of a multistate entity, of  
47 which the city is a participating member, created to  
48 provide drinking water that has received or is  
49 receiving federal funds, but only if such property is  
50 to be acquired for water transmission and service

1 lines, pump stations, water storage tanks, meter  
2 houses and vaults, related appurtenances, or  
3 supporting utilities."

4 56. Page 20, by inserting after line 20 the  
5 following:

6 "The exceptions provided in paragraphs "a" through  
7 "c" apply only to the extent the city had this power  
8 prior to July 1, 2006."

9 57. Page 25, by striking lines 17 through 20.

10 58. Page 28, line 33, by inserting after the word  
11 "of" the following: "that section of".

12 59. Page 29, by striking lines 3 through 6 and  
13 inserting the following:

14 "3. The sections of this Act amending sections  
15 6B.2B and 6B.14, unnumbered paragraph 2, the portion  
16 of the section of this Act amending section 6B.54,  
17 subsection 3, and the section of this Act enacting  
18 section 6B.2D take effect January 1, 2007.

19 4. The sections of this Act amending section 6B.3,  
20 subsection 3, section 6B.56, subsection 2, sections  
21 6B.57 and 6B.58, being deemed of immediate importance,  
22 take effect upon enactment.

23 5. The remainder of this Act, being deemed of  
24 immediate importance, takes effect upon enactment and  
25 applies to applications for condemnation filed  
26 pursuant to section 6B.3 on or after the date of  
27 enactment, with the following exceptions:

28 a. The section of this Act enacting section 6A.23  
29 applies to applications for condemnation pending on  
30 the date of enactment of this Act if the appropriate  
31 parties have not been served with a notice of  
32 assessment pursuant to section 6B.8 as of the date of  
33 enactment of this Act.

34 b. The section of this Act amending section 6B.33  
35 and that portion of the section of this Act enacting  
36 6B.54, subsection 12, apply to applications for  
37 condemnation filed pursuant to section 6B.3 and  
38 pending on the date of enactment of this Act if the  
39 appraisal report required under section 6B.14 has  
40 not been filed with the sheriff as of the date of  
41 enactment of this Act."

42 60. By renumbering and correcting internal  
43 references as necessary.

By BOB BRUNKHORST  
KEITH A. KREIMAN  
DAVID MILLER

ROGER STEWART  
HERMAN C. QUIRMBACH

HOUSE FILE 2351

S-5168

1 Amend the amendment, S-5166, to House File 2351, as  
2 amended, passed, and reprinted by the House, as  
3 follows:

4 1. By striking page 2, line 22, through page 3,  
5 line 1, and inserting the following:

6 ""(1) An acquiring agency considering the use of  
7 eminent domain authority to acquire property as part  
8 of a project to construct a lake shall conduct a  
9 review of alternatives to such lake development before  
10 making a determination that such lake development is  
11 reasonable and necessary. Notwithstanding section  
12 6B.56, if property is acquired by condemnation as part  
13 of a project to construct a lake, the prior owner of  
14 that property, or the prior owner's heirs or assigns,  
15 shall have first right to purchase the property at a  
16 price equal to the fair market value of the property  
17 at the time it was acquired by the acquiring agency  
18 from the prior owner if such property is offered for  
19 sale by the acquiring agency within ten years after  
20 acquisition of the property by the acquiring agency.""

By JEFF ANGELO

S-5168 FILED APRIL 5, 2006

HOUSE FILE 2351

S-5189

1 Amend the amendment, S-5166, to House File 2351, as  
2 amended, passed, and reprinted by the House, as  
3 follows:

4 1. Page 11, line 35, by striking the words "for  
5 the following:" and inserting the following: "for the  
6 following, subject to the provisions of chapters 6A  
7 and 6B:"

By BOB BRUNKHORST  
KEITH A. KREIMAN

S-5189 FILED APRIL 11, 2006

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HOUSE FILE 2351

S-5196

1 Amend the amendment, S-5166, to House File 2351, as  
2 amended, passed, and reprinted by the House, as  
3 follows:

4 1. Page 11, by inserting after line 32 the  
5 following:

6 "\_\_\_\_. Page 18, by inserting before line 17 the  
7 following:

8 "Sec. \_\_\_\_ . NEW SECTION. 16.54 PROPERTY TAX  
9 REIMBURSEMENT PROGRAM -- FUND CREATED.

10 1. A property tax reimbursement program is  
11 established under the supervision of the authority to  
12 provide financial assistance in paying property taxes  
13 on replacement housing property for an eligible  
14 homeowner. A homeowner is eligible to file a claim  
15 for property tax reimbursement under this section if  
16 all of the following apply:

17 a. The homeowner's previous residence was acquired  
18 by eminent domain.

19 b. The homeowner's residence acquired by eminent  
20 domain was located in that portion of an urban renewal  
21 area designated as a slum and blighted area pursuant  
22 to chapter 403.

23 c. The homeowner's residence was acquired as part  
24 of a project or acquisition plan whereby more than  
25 seventy-five percent of the area included in the plan  
26 is in a slum or blighted condition as defined in  
27 section 6A.22.

28 d. The homeowner's residence was one of the  
29 properties comprising the twenty-five percent or less  
30 of the project or acquisition plan area that was not  
31 in a slum or blighted condition as defined in section  
32 6A.22.

33 e. The homeowner's residence was acquired by  
34 eminent domain no more than two years before the  
35 homeowner first applies for assistance under this  
36 section.

37 f. The homeowner is a lower income family as  
38 defined in section 16.1.

39 2. a. A property tax reimbursement claim shall  
40 not exceed an amount equal to the base year property  
41 taxes subtracted from the current year property taxes.

42 b. For purposes of this subsection:

43 (1) "Base year property taxes" means the last full  
44 fiscal year's property taxes the homeowner paid on the  
45 residence that was acquired by eminent domain.

46 (2) "Current year property taxes" means the amount  
47 calculated by applying the levy rate for the fiscal  
48 year beginning in the calendar year the claim is filed  
49 to the adjusted valuation amount.

50 (3) "Adjusted valuation amount" means the amount

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1 of damages paid to the homeowner by the acquiring  
2 agency times the assessment limitation percentage  
3 determined pursuant to section 441.21, subsection 4,  
4 for the assessment year ending in the calendar year  
5 prior to the calendar year the claim is filed.

6 c. A claim for property tax reimbursement shall be  
7 filed each year between January 15 and February 15  
8 before the start of the fiscal year for which the  
9 claim is filed.

10 d. An eligible homeowner may claim a property tax  
11 reimbursement under this section for up to five years  
12 or until the replacement housing property is  
13 transferred by the homeowner, whichever is sooner.

14 3. A property tax reimbursement fund is created  
15 within the authority to pay claims filed under this  
16 section. Notwithstanding section 12C.7, interest or  
17 earnings on moneys in the property tax reimbursement  
18 fund or appropriated to the fund shall be credited to  
19 the fund. Notwithstanding section 8.33, unencumbered  
20 and unobligated moneys remaining in the fund at the  
21 close of each fiscal year shall not revert but shall  
22 remain available for expenditure for the same purposes  
23 in the succeeding fiscal year.

24 If moneys in the property tax reimbursement fund  
25 are insufficient to pay the total of all claims filed  
26 for a fiscal year, the claims for that year shall be  
27 prorated among all claimants in the proportion that  
28 each valid claim bears to the total of all valid  
29 claims filed for that fiscal year.

30 4. The authority shall adopt rules pursuant to  
31 chapter 17A necessary to administer this section."

32 2. Page 12, by inserting before line 10 the  
33 following:

34 "\_\_\_\_. Page 28, by inserting after line 28 the  
35 following:

36 "Sec. \_\_\_\_ . APPROPRIATION: There is appropriated  
37 from the general fund of the state to the Iowa finance  
38 authority for the fiscal year beginning July 1, 2006,  
39 and ending June 30, 2007, the following amount, or so  
40 much thereof as is necessary, to be used for the  
41 following purpose:

42 For payment of property tax reimbursement claims  
43 under the property tax reimbursement program  
44 established in section 16.54:

45 ..... \$ 1,000,000"

46 3. Title page, line 3, by inserting after the  
47 word "matters," the following: "making an  
48 appropriation,"

49 4. By renumbering as necessary.

By KEITH A. KREIMAN

HOUSE FILE 2351

S-5194

- 1 Amend the amendment, S-5166, to House File 2351, as  
2 amended, passed, and reprinted by the House, as  
3 follows:  
4 1. Page 1, lines 13 and 14, by striking the word  
5 "seventy-five" and inserting the following: "fifty-  
6 one".  
7 2. Page 3, line 37, by striking the word  
8 "seventy-five" and inserting the following: "fifty-  
9 one".  
10 3. By renumbering as necessary.

By JACK HATCH  
BRAD ZAUN  
WILLIAM A. DOTZLER

S-5194 FILED APRIL 12, 2006  
WITHDRAWN

SENATE AMENDMENT TO  
HOUSE FILE 2351

H-8647

1 Amend House File 2351, as amended, passed, and  
2 reprinted by the House, as follows:

3 1. Page 2, lines 4 and 5, by striking the words  
4 "utilities or persons" and inserting the following:  
5 "utilities, ~~or~~ persons, companies, or corporations".

6 2. Page 2, line 29, by inserting after the word  
7 "property" the following: "for redevelopment purposes  
8 and to eliminate slum or blighted conditions".

9 3. Page 2, line 35, by striking the words "city  
10 or county" and inserting the following:  
11 "municipality".

12 4. Page 3, by striking lines 1 through 3 and  
13 inserting the following: "public input, if seventy-  
14 five percent or more of the area included in the plan  
15 consists of property in a slum or blighted".

16 5. Page 3, line 6, by inserting after the word  
17 "municipality." the following: "The project or  
18 acquisition plan area shall only include the adjacent  
19 and contiguous parcels necessary for the completion of  
20 planned activities for a specific business or housing  
21 project. Before a municipality exercises its eminent  
22 domain authority to acquire properties in a project or  
23 acquisition plan area that are not in a slum or  
24 blighted condition, the municipality shall be required  
25 to adopt a resolution by a two-thirds majority to  
26 authorize the acquisition of such property by eminent  
27 domain. The resolution shall make a finding that  
28 includes at a minimum all of the following:

29 (a) The taking of such property is necessary to  
30 achieve the project or acquisition plan objectives.

31 (b) The taking of property for the project or  
32 acquisition plan will eliminate or rehabilitate the  
33 slum and blighted conditions in the area.

34 (c) If the specific project is for a business, the  
35 proposed project or acquisition plan will confer  
36 economic benefits upon the municipality."

37 6. Page 3, by striking lines 7 through 10.

38 7. Page 3, by striking lines 11 through 14 and  
39 inserting the following:

40 "For purposes of this subparagraph (5):

41 (a) "Blighted condition" means the presence of a  
42 substantial number of slum or deteriorated structures;  
43 insanitary or unsafe".

44 8. Page 3, by striking line 24 and inserting the  
45 following:

46 "(b) "Slum condition"".

47 9. Page 3, by striking line 32 and inserting the  
48 following: "sanitation; by reason".

49 10. Page 4, by striking line 2 and inserting the  
50 following:

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1 "(c) In no case shall".  
2 11. Page 4, by inserting after line 4 the  
3 following:

4 "(d) "Project or acquisition plan" means the  
5 planned activities of a municipality to rehabilitate  
6 or redevelop specific property in that portion of an  
7 urban renewal area designated as a slum or blighted  
8 area pursuant to chapter 403. The planned activities  
9 may include the sale and acquisition of property;  
10 demolition and removal of buildings and improvements;  
11 construction, repair, and rehabilitation of buildings  
12 or other improvements; and installation, construction,  
13 or reconstruction of streets and utilities.

14 (e) "Economic benefits" means the creation of new  
15 employment opportunities or the retention of  
16 employment opportunities."

17 12. Page 4, line 11, by striking the words  
18 "development or," and inserting the following:  
19 "development, or".

20 13. Page 4, by striking lines 14 through 19 and  
21 inserting the following:

22 "(1) If private property is to be condemned for  
23 development or creation of a lake, only that number of  
24 acres justified as necessary for a surface drinking  
25 water source, and not otherwise acquired, may be  
26 condemned. In addition, the acquiring agency shall  
27 conduct a review of prudent and feasible alternatives  
28 to provision of a drinking water source prior to  
29 making a determination that such lake development or  
30 creation is reasonable and necessary. Development or  
31 creation of a lake as a surface drinking water source  
32 includes all of the following:

33 (a) Construction of the dam, including sites for  
34 suitable borrow material and the auxiliary spillway.

35 (b) The water supply pool.

36 (c) The sediment pool.

37 (d) The flood control pool.

38 (e) The floodwater retarding pool.

39 (f) The surrounding area upstream of the dam no  
40 higher in elevation than the top of the dam's  
41 elevation.

42 (g) The appropriate setback distance required by  
43 state or federal laws and regulations to protect  
44 drinking water supply.

45 For purposes of this subparagraph (1), "number of  
46 acres justified as necessary for a surface drinking  
47 water source" means according to guidelines of the  
48 United States natural resource conservation service  
49 and according to analyses of surface drinking water  
50 capacity needs conducted by one or more registered

1 professional engineers."

2 14. Page 4, by striking lines 20 through 24.

3 15. Page 4, by striking lines 25 through 27.

4 16. Page 5, line 6, by inserting after the word  
5 "action." the following: "This subparagraph does not  
6 apply if any of the following conditions is met:

7 (a) The property to be condemned is for an  
8 improvement to an existing airport, airport system, or  
9 aviation facilities if such improvement is required by  
10 federal law, regulation, or order or if such  
11 improvement is included in an airport layout plan  
12 approved by the federal aviation administration for  
13 the existing site of the airport, airport system, or  
14 aviation facilities.

15 (b) The property to be condemned has been zoned by  
16 a city or county for use as an airport, airport  
17 system, or aviation facilities.

18 (c) The property to be condemned is for a proposed  
19 airport, airport system, or aviation facilities that  
20 as of July 1, 2006, was designated in the federal  
21 aviation administration national plan for integrated  
22 airport services, and the property to be condemned is  
23 located within the county where at least one of the  
24 cities that will participate in operation of the  
25 proposed airport, airport system, or aviation  
26 facilities is located."

27 17. By striking page 5, line 7, through page 7,  
28 line 13.

29 18. Page 7, by inserting before line 14 the  
30 following:

31 "Sec. \_\_\_\_ . NEW SECTION. 6A.22A EXCEPTION FOR  
32 CERTAIN URBAN RENEWAL AREAS.

33 1. The requirement in section 6A.22, subsection 2,  
34 paragraph "a", subparagraph (5), that eminent domain  
35 authority be exercised on a parcel-by-parcel basis and  
36 the exception in that subparagraph (5) for project or  
37 acquisition plans with seventy-five percent or more of  
38 the area consisting of property in a slum or blighted  
39 condition, take effect October 1, 2006. However, if  
40 an acquiring agency adopts a resolution after the date  
41 of enactment of this Act but before October 1, 2006,  
42 approving acquisition of property by eminent domain in  
43 that portion of an urban renewal area designated as a  
44 slum or blighted area, such requirement or exception  
45 shall not apply to any condemnation application  
46 seeking to condemn that property if the application is  
47 filed before October 1, 2007, with the chief judge of  
48 the judicial district of the county in which the  
49 property is located.

50 2. This section is repealed December 31, 2007."

1 19. Page 7, by inserting before line 14 the  
2 following:  
3 "Sec. \_\_\_\_ . NEW SECTION. 6A.23 JUDICIAL REVIEW OF  
4 EMINENT DOMAIN AUTHORITY.  
5 1. An owner of property described in an  
6 application for condemnation may bring an action  
7 challenging the exercise of eminent domain authority  
8 or the condemnation proceedings. Such action shall be  
9 commenced within thirty days after service of notice  
10 of assessment pursuant to section 6B.8 by the filing  
11 of a petition in district court. Service of the  
12 original notice upon the acquiring agency shall be as  
13 required in the rules of civil procedure. In addition  
14 to the owner of the property, a contract purchaser of  
15 record of the property or a tenant occupying the  
16 property under a recorded lease shall also have  
17 standing to bring such action.  
18 2. An acquiring agency that proposes to acquire  
19 property by eminent domain may file a petition in  
20 district court seeking a determination and declaration  
21 that its finding of public use, public purpose, or  
22 public improvement necessary to support the taking  
23 meets the definition of those terms. The action shall  
24 be commenced by the filing of a petition identifying  
25 all property owners whose property is proposed to be  
26 acquired, any contract purchaser of record of the  
27 property, and any tenant known to be occupying the  
28 property, and including a description of the  
29 properties proposed to be acquired and a statement of  
30 the public use, public purpose, or public improvement  
31 supporting the acquisition of the property by eminent  
32 domain. The original notice shall be served as  
33 required by the rules of civil procedure on each  
34 property owner named in the petition and on any  
35 contract purchaser of record of the property and on  
36 any tenant occupying the property under a recorded  
37 lease. Such action may be commenced by an acquiring  
38 agency at any time prior to the filing of an  
39 application for condemnation pursuant to section 6B.3.  
40 3. For any action brought under this section, the  
41 burden of proof shall be on the acquiring agency to  
42 prove by a preponderance of the evidence that the  
43 finding of public use, public purpose, or public  
44 improvement meets the definition of those terms. If a  
45 property owner or a contract purchaser of record or a  
46 tenant occupying the property under a recorded lease  
47 prevails in an action brought under this section, the  
48 acquiring agency shall be required to pay the costs,  
49 including reasonable attorney fees, of the adverse  
50 party."

1 20. Page 7, line 34, by striking the words "may  
2 offer" and inserting the following: "may make".

3 21. Page 8, line 1, by striking the word "twenty-  
4 five" and inserting the following: "thirty".

5 22. Page 8, line 11, by inserting after the  
6 figure "6B.54." the following: "The option to make an  
7 alternative purchase offer does not apply when  
8 property is being acquired for street and highway  
9 projects undertaken by the state, a county, or a  
10 city."

11 23. Page 8, by inserting after line 11 the  
12 following:

13 "Sec. \_\_\_\_ . NEW SECTION. 6B.2D NOTICE OF INTENT  
14 TO APPROVE ACQUISITION OF PROPERTY BY EMINENT DOMAIN.

15 1. The acquiring agency shall send notice of a  
16 proposed resolution, motion, or other document  
17 authorizing acquisition of property by eminent domain  
18 to each property owner whose property is proposed to  
19 be acquired by eminent domain, to any contract  
20 purchaser of record of the property, and to any tenant  
21 known to be occupying the property at least fourteen  
22 days prior to the date of the meeting at which such  
23 proposed authorization will be considered for adoption  
24 by the acquiring agency. The notice shall include the  
25 date, time, and place of the meeting and a statement  
26 that the persons receiving the notice have a right to  
27 attend the meeting and to voice objection to the  
28 proposed acquisition of the property. The notice  
29 shall include a copy of the proposed resolution,  
30 motion, or other document authorizing acquisition by  
31 eminent domain. The notice shall also include the  
32 same statement of individual rights that is required  
33 by section 6B.2A.

34 2. This section shall not apply to the following:

35 a. Street and highway projects undertaken by the  
36 state, a county, or a city.

37 b. Projects undertaken by a municipal utility.

38 c. Projects undertaken by a city enterprise  
39 providing services of sewer systems, storm water  
40 drainage systems, sewage treatment, solid waste  
41 collection, or solid waste disposal.

42 d. Projects undertaken by a county enterprise  
43 providing services described in section 331.461,  
44 subsection 2, paragraphs "b" and "f".

45 24. By striking page 8, line 22, through page 9,  
46 line 1.

47 25. Page 9, by inserting before line 2 the  
48 following:

49 "Sec. \_\_\_\_ . Section 6B.3, subsection 2, Code 2005,  
50 is amended to read as follows:

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

15 In lieu of mailing and publishing the application,  
16 the applicant may cause the application to be served  
17 upon the owner, contract purchaser of record, tenant  
18 known to be occupying the property, record  
19 lienholders, and record encumbrancers of the property  
20 in the manner provided by the Iowa rules of civil  
21 procedure for the personal service of original notice.  
22 The application shall be mailed and published or  
23 served, as above provided, prior to or  
24 contemporaneously with the mailing and publication or  
25 service of the list of compensation commissioners as  
26 provided in section 6B.4."

27 26. Page 9, by striking lines 22 through 25 and  
28 inserting the following: "is situated as provided in  
29 section 6A.23."

30 27. Page 10, by striking lines 17 through 24 and  
31 inserting the following: "may deliberate in closed  
32 session. When deliberating in closed session, the  
33 meeting is closed to all persons who are not  
34 commissioners except for personnel from the sheriff's  
35 office if such personnel is requested by the  
36 commission. After deliberations commence, the  
37 commission and each commissioner is prohibited from  
38 communicating with any party to the proceeding, ~~unless~~  
39 ~~such communication occurs in the presence of or with~~  
40 ~~the consent of the property owner and the other~~  
41 ~~parties who appeared before the commission.~~ However,  
42 if the commission is deliberating in closed session,  
43 and after deliberations commence the commission  
44 requires further information from a party or a  
45 witness, the commission shall notify the property  
46 owner and the acquiring agency that they are allowed  
47 to attend the meeting at which such additional  
48 information shall be provided but only for that period  
49 of time during which the additional information is  
50 being provided. The property owner and the acquiring

1 agency shall be given a reasonable opportunity to  
2 attend the meeting. The".

3 28. Page 11, by inserting before line 4 the  
4 following:

5 "Sec. \_\_\_\_ . Section 6B.33, Code 2005, is amended to  
6 read as follows:

7 6B.33 COSTS AND ATTORNEY FEES.

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

42 29. Page 11, line 28, by striking the word  
43 "commissioners" and inserting the following:  
44 "acquiring agency".

45 30. Page 13, line 24, by striking the word  
46 "offer" and inserting the following: "make".

47 31. Page 13, line 26, by striking the word  
48 "twenty-five" and inserting the following: "thirty".

49 32. Page 14, line 2, by inserting after the word  
50 "easement." the following: "The option to make an

1 alternative purchase offer does not apply when  
2 property is being acquired for street and highway  
3 projects undertaken by the state, a county, or a  
4 city."

5 33. Page 15, by striking lines 18 through 20.

6 34. Page 15, line 35, by striking the word  
7 "twenty-five" and inserting the following: "thirty".

8 35. Page 16, line 5, by inserting after the word  
9 "law." the following: "This subsection does not apply  
10 when property is being acquired for street and highway  
11 projects undertaken by the state, a county, or a  
12 city."

13 36. Page 16, by inserting after line 13 the  
14 following:

15 "Sec. \_\_\_\_ . Section 6B.56, subsection 1, Code 2005,  
16 is amended to read as follows:

17 1. If real property condemned pursuant to this  
18 chapter is not used for the purpose stated in the  
19 application filed pursuant to section 6B.3 and the  
20 ~~condemner~~ acquiring agency seeks to dispose of the  
21 real property, the ~~condemner~~ acquiring agency shall  
22 first offer the property for sale to the prior owner  
23 of the condemned property as provided in this section.  
24 If real property condemned pursuant to this chapter is  
25 used for the purpose stated in the application filed  
26 pursuant to section 6B.3 and the acquiring agency  
27 seeks to dispose of the real property by sale to a  
28 private person or entity within five years after  
29 acquisition of the property, the acquiring agency  
30 shall first offer the property for sale to the prior  
31 owner of the condemned property as provided in this  
32 section. For purposes of this section, the prior  
33 owner of the real property includes the successor in  
34 interest of the real property."

35 37. Page 16, line 17, by striking the word  
36 "condemner" and inserting the following: "~~condemner~~  
37 acquiring agency".

38 38. Page 16, line 18, by striking the word  
39 "condemner's" and inserting the following:  
40 "~~condemner's~~ acquiring agency's".

41 39. Page 16, by striking line 25 and inserting  
42 the following: "agency from the prior owner plus  
43 cleanup costs incurred by the acquiring agency,  
44 whichever is less. However, the current appraised  
45 value of the real property shall be the purchase price  
46 to be paid by the previous owner if any other amount  
47 would result in a loss of federal funding for projects  
48 funded in whole or in part with federal funds. The  
49 notice".

50 40. Page 16, line 26, by striking the word

1 "condemner" and inserting the following: "~~condemner~~  
2 acquiring agency".

3 41. Page 16, by inserting after line 28 the  
4 following:

5 "Sec. \_\_\_\_\_. Section 6B.56, subsection 3, Code 2005,  
6 is amended to read as follows:

7 3. If the prior owner elects to purchase the real  
8 property at the price established in subsection 2,  
9 before the expiration of the sixty-day period, the  
10 prior owner shall notify the ~~condemner~~ acquiring  
11 agency in writing of this intention and file a copy of  
12 this notice with the office of the recorder in the  
13 county in which the real property is located."

14 42. Page 16, by inserting after line 28 the  
15 following:

16 "For purposes of this subsection, "cleanup costs"  
17 means costs incurred to abate a nuisance or a public  
18 nuisance as those terms are defined in chapters 657  
19 and 657A and costs incurred to recycle and remediate  
20 land pursuant to chapter 455H."

21 43. By striking page 16, line 29, through page  
22 17, line 18.

23 44. Page 17, by inserting before line 19 the  
24 following:

25 "Sec. \_\_\_\_\_. NEW SECTION. 6B.56A DISPOSITION OF  
26 CONDEMNED PROPERTY -- FIVE-YEAR TIME PERIOD.

27 1. When five years have elapsed since property was  
28 condemned and the property has not been used for the  
29 purpose stated in the application filed pursuant to  
30 section 6B.3, and the acquiring agency has not taken  
31 action to dispose of the property pursuant to section  
32 6B.56, the acquiring agency shall, within sixty days,  
33 adopt a resolution reaffirming the purpose for which  
34 the property will be used or offering the property for  
35 sale to the prior owner at a price as provided in  
36 section 6B.56. If the resolution adopted approves an  
37 offer of sale to the prior owner, the offer shall be  
38 made in writing and mailed by certified mail to the  
39 prior owner. The prior owner has one hundred eighty  
40 days after the offer is mailed to purchase the  
41 property from the acquiring agency.

42 2. If the acquiring agency has not adopted a  
43 resolution described in subsection 1 within the sixty-  
44 day time period, the prior owner may, in writing,  
45 petition the acquiring agency to offer the property  
46 for sale to the prior owner at a price as provided in  
47 section 6B.56. Within sixty days after receipt of  
48 such a petition, the acquiring agency shall adopt a  
49 resolution described in subsection 1. If the  
50 acquiring agency does not adopt such a resolution

1 within sixty days after receipt of the petition, the  
2 acquiring agency is deemed to have offered the  
3 property for sale to the prior owner.

4 3. The acquiring agency shall give written notice  
5 to the owner of the right to purchase the property  
6 under this section at the time damages are paid to the  
7 owner.

8 4. This section does not apply to property  
9 acquired for street and highway projects undertaken by  
10 the state, a county, or a city."

11 45. Page 17, by inserting before line 19, the  
12 following:

13 "Sec. \_\_\_\_\_. Section 6B.57, Code 2005, is amended to  
14 read as follows:

15 6B.57 PROCEDURAL COMPLIANCE.

16 If an acquiring agency makes a good faith effort to  
17 serve, send, or provide the notices or documents  
18 required under this chapter to the owner and any  
19 contract purchaser of private property that is or may  
20 be the subject of condemnation, or to any tenant known  
21 to be occupying such property if notices or documents  
22 are required to be served, sent, or provided to such a  
23 person, but fails to provide the notice or documents  
24 to the owner and any contract purchaser, or to any  
25 tenant known to be occupying the property if  
26 applicable, such failure shall not constitute grounds  
27 for invalidation of the condemnation proceeding if the  
28 chief judge of the judicial district determines that  
29 such failure can be corrected by delaying the  
30 condemnation proceedings to allow compliance with the  
31 requirement or such failure does not unreasonably  
32 prejudice the owner or any contract purchaser."

33 46. Page 17, by inserting before line 19 the  
34 following:

35 "Sec. \_\_\_\_\_. Section 6B.58, Code 2005, is amended to  
36 read as follows:

37 6B.58 ACQUIRING AGENCY -- DEFINITION.

38 For purposes of this chapter, an "acquiring agency"  
39 means the state of Iowa or any person or entity  
40 conferred the right by statute to condemn private  
41 property or to otherwise exercise the power of eminent  
42 domain. In the exercise of eminent domain power, the  
43 words "applicant" and "condemner" mean acquiring  
44 agency as defined in this section, unless the context  
45 clearly requires otherwise."

46 47. Page 17, by striking lines 20 through 24 and  
47 inserting the following:

48 "Rent shall not be charged to a person in  
49 possession of the property and shall not accrue  
50 against the property owner until all or a portion of

1 the compensation commission award has been paid to the  
2 condemnee pursuant to section 6B.25."

3 48. By striking page 17, line 30, through page  
4 18, line 2, and inserting the following: "to acquire  
5 property shall not exercise such authority outside the  
6 jurisdictional limits of the political subdivisions  
7 participating in the entity at the time of such  
8 exercise of authority without first presenting the  
9 proposal to acquire such property by eminent domain to  
10 the board of supervisors of each county where the  
11 property is located and such proposal receives the  
12 approval, by resolution, of each applicable board of  
13 supervisors. However, this section does not apply to  
14 an entity created by or on behalf of one or more  
15 political subdivisions if the entity is authorized by  
16 statute to act as a political subdivision and if this  
17 section would limit the ability of the entity to  
18 comply with requirements or limitations imposed by the  
19 Internal Revenue Code to preserve the tax exemption of  
20 interest payable on bonds or obligations of the entity  
21 acting as a political subdivision."

22 49. Page 18, line 5, by inserting after the word  
23 and figure "chapter 476A." the following: "This  
24 section does not apply to property condemned by or on  
25 behalf of a multistate entity created to provide  
26 drinking water that has received or is receiving  
27 federal funds, but only if such property is to be  
28 acquired for water transmission and service lines,  
29 pump stations, water storage tanks, meter houses and  
30 vaults, related appurtenances, or supporting  
31 utilities."

32 50. Page 18, by striking lines 6 through 16.

33 51. Page 19, by striking lines 4 through 23.

34 52. Page 20, by striking lines 12 and 13, and  
35 inserting the following: "for the following, subject  
36 to the provisions of chapters 6A and 6B:"

37 53. Page 20, by inserting after line 20 the  
38 following:

39 "e. The operation of a landfill or other solid  
40 waste disposal or processing site."

41 54. Page 20, by inserting after line 20 the  
42 following:

43 "\_\_\_ . The use of property for public streets and  
44 highways."

45 55. Page 20, by inserting after line 20 the  
46 following:

47 "\_\_\_ . The operation of a multistate entity, of  
48 which the city is a participating member, created to  
49 provide drinking water that has received or is  
50 receiving federal funds, but only if such property is

1 to be acquired for water transmission and service  
2 lines, pump stations, water storage tanks, meter  
3 houses and vaults, related appurtenances, or  
4 supporting utilities."

5 56. Page 20, by inserting after line 20 the  
6 following:

7 "The exceptions provided in paragraphs "a" through  
8 "c" apply only to the extent the city had this power  
9 prior to July 1, 2006."

10 57. Page 25, by striking lines 17 through 20.

11 58. Page 28, line 33, by inserting after the word  
12 "of" the following: "that section of".

13 59. Page 29, by striking lines 3 through 6 and  
14 inserting the following:

15 "3. The sections of this Act amending sections  
16 6B.2B and 6B.14, unnumbered paragraph 2, the portion  
17 of the section of this Act amending section 6B.54,  
18 subsection 3, and the section of this Act enacting  
19 section 6B.2D take effect January 1, 2007.

20 4. The sections of this Act amending section 6B.3,  
21 subsection 3, section 6B.56, subsection 2, sections  
22 6B.57 and 6B.58, being deemed of immediate importance,  
23 take effect upon enactment.

24 5. The remainder of this Act, being deemed of  
25 immediate importance, takes effect upon enactment and  
26 applies to applications for condemnation filed  
27 pursuant to section 6B.3 on or after the date of  
28 enactment, with the following exceptions:

29 a. The section of this Act enacting section 6A.23  
30 applies to applications for condemnation pending on  
31 the date of enactment of this Act if the appropriate  
32 parties have not been served with a notice of  
33 assessment pursuant to section 6B.8 as of the date of  
34 enactment of this Act.

35 b. The section of this Act amending section 6B.33  
36 and that portion of the section of this Act enacting  
37 6B.54, subsection 12, apply to applications for  
38 condemnation filed pursuant to section 6B.3 and  
39 pending on the date of enactment of this Act if the  
40 appraisal report required under section 6B.14 has  
41 not been filed with the sheriff as of the date of  
42 enactment of this Act."

43 60. By renumbering and correcting internal  
44 references as necessary.

RECEIVED FROM THE SENATE

HOUSE FILE 2351

AN ACT

RELATING TO GOVERNMENT AUTHORITY, INCLUDING EMINENT DOMAIN  
AUTHORITY AND CONDEMNATION PROCEDURES, AND OTHER PROPERLY  
RELATED MATTERS, AND INCLUDING EFFECTIVE AND APPLICABILITY  
PROVISIONS.

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

Section 1. Section 6A.4, subsection 2, unnumbered  
paragraph 1, Code 2005, is amended to read as follows:

Upon the owner or lessee of lands, which have no public or  
private way to the lands, for the purpose of providing a  
public way, ~~not exceeding forty feet in width,~~ which will  
connect with an existing public road. The condemned public  
way shall not exceed forty feet in width when such lands are  
agricultural or have a single residence located on them. For  
all other uses, the condemned public way shall not exceed  
sixty-six feet. The condemned public way shall be located on  
a division, subdivision or "forty" line, or immediately  
adjacent thereto, and along the line which is the nearest  
feasible route to an existing public road, or along a route  
established for a period of ten years or more by an easement  
of record or by use and travel to and from the property by the  
owner and the general public. The public way shall not  
interfere with buildings, orchards, or cemeteries. When  
passing through enclosed lands, the public way shall be fenced  
on both sides by the condemner upon request of the owner of  
the condemned land. The condemner or the condemner's  
assignee, shall provide easement for access to the owner of  
property severed by the condemnation. The public way shall be  
maintained by the condemner or the condemner's assignee, and

shall not be considered any part of the primary or secondary  
road systems.

Sec. 2. Section 6A.21, subsection 2, Code 2005, is amended  
to read as follows:

2. The limitation on the definition of public use, public  
purpose, or public improvement does not apply to ~~a sium-area  
or blighted-area-as-defined-in-section-403-i77-or-to  
agricultural-land-acquired-for-industry-as-that-term-is  
defined-in-section-260E-27-or-to~~ the establishment,  
relocation, or improvement of a road pursuant to chapter 306,  
or to the establishment of a railway under the supervision of  
the department of transportation as provided in section  
327C.2, or to an airport as defined in section 328.1, or to  
land acquired in order to replace or mitigate land used in a  
road project when federal law requires replacement or  
mitigation. This limitation also does not apply to utilities,  
or persons, companies, or corporations under the jurisdiction  
of the Iowa utilities board in the department of commerce or  
to any other utility conferred the right by statute to condemn  
private property or to otherwise exercise the power of eminent  
domain.

Sec. 3. NEW SECTION. 6A.22 ADDITIONAL LIMITATIONS ON  
EXERCISE OF POWER -- DEFINITIONS.

1. In addition to the limitations in section 6A.21, the  
authority of an acquiring agency to condemn any private  
property through eminent domain may only be exercised for a  
public purpose, public use, or public improvement. However,  
if the owner of the property consents to the condemnation, the  
property may be condemned for any purpose.

2. a. "Public use", "public purpose", or "public  
improvement" means one or more of the following:

- (1) The possession, occupation, and enjoyment of property  
by the general public or governmental entities.
- (2) The acquisition of any interest in property necessary  
to the function of a public or private utility, common  
carrier, or airport or airport system.

(3) Private use that is incidental to the public use of the property, provided that no property shall be condemned solely for the purpose of facilitating such incidental private use.

(4) The acquisition of property pursuant to chapter 455H.

(5) The acquisition of property for redevelopment purposes and to eliminate slum or blighted conditions in that portion of an urban renewal area designated as a slum or blighted area if each parcel, or any improvements thereon, for which condemnation is sought is determined by the governing body of the municipality to be in a slum or blighted condition. However, for a project or acquisition plan adopted by the governing body of a municipality after due deliberation and public input, if seventy-five percent or more of the area included in the plan consists of property in a slum or blighted condition at the time the plan was established, the entire project or acquisition plan area is subject to condemnation by the municipality. The project or acquisition plan area shall only include the adjacent and contiguous parcels necessary for the completion of planned activities for a specific business or housing project. Before a municipality exercises its eminent domain authority to acquire properties in a project or acquisition plan area that are not in a slum or blighted condition, the municipality shall be required to adopt a resolution by a two-thirds majority to authorize the acquisition of such property by eminent domain. The resolution shall make a finding that includes at a minimum all of the following:

(a) The taking of such property is necessary to achieve the project or acquisition plan objectives.

(b) The taking of property for the project or acquisition plan will eliminate or rehabilitate the slum and blighted conditions in the area.

(c) If the specific project is for a business, the proposed project or acquisition plan will confer economic benefits upon the municipality.

For purposes of this subparagraph (5):

(a) "Blighted condition" means the presence of a substantial number of slum or deteriorated structures; insanitary or unsafe conditions; excessive and uncorrected deterioration of site or other improvements; tax or special assessment delinquency exceeding the fair value of the land; defective or unusual conditions of title; or the existence of conditions which endanger life or property by fire and other causes; or the existence of conditions which retard the provision of housing accommodations for low or moderate income families, or is a menace to the public health and safety in its present condition and use.

(b) "Slum condition" means a condition conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime, or detrimental to the public health and safety due to a predominance of buildings or improvements, whether residential or nonresidential, by reason of the following: by reason of dilapidation, deterioration that is excessive and uncorrected, age or obsolescence; by reason of inadequate provision for sanitation; by reason of high density of population and overcrowding; by reason of the existence of conditions which endanger life or property by fire and other causes; or by reason of any combination of such factors.

(c) In no case shall land that is agricultural land be determined to be in a slum condition or blighted condition.

(d) "Project or acquisition plan" means the planned activities of a municipality to rehabilitate or redevelop specific property in that portion of an urban renewal area designated as a slum or blighted area pursuant to chapter 403. The planned activities may include the sale and acquisition of property; demolition and removal of buildings and improvements; construction, repair, and rehabilitation of buildings or other improvements; and installation, construction, or reconstruction of streets and utilities.

(e) "Economic benefits" means the creation of new employment opportunities or the retention of employment opportunities.

b. Except as specifically included in the definition in paragraph "a", "public use" or "public purpose" or "public improvement" does not mean economic development activities resulting in increased tax revenues, increased employment opportunities, privately owned or privately funded housing and residential development, privately owned or privately funded commercial or industrial development, or the lease of publicly owned property to a private party.

c. Notwithstanding paragraph "a":

(1) If private property is to be condemned for development or creation of a lake, only that number of acres justified as necessary for a surface drinking water source, and not otherwise acquired, may be condemned. In addition, the acquiring agency shall conduct a review of prudent and feasible alternatives to provision of a drinking water source prior to making a determination that such lake development or creation is reasonable and necessary. Development or creation of a lake as a surface drinking water source includes all of the following:

(a) Construction of the dam, including sites for suitable borrow material and the auxiliary spillway.

(b) The water supply pool.

(c) The sediment pool.

(d) The flood control pool.

(e) The floodwater retarding pool.

(f) The surrounding area upstream of the dam no higher in elevation than the top of the dam's elevation.

(g) The appropriate setback distance required by state or federal laws and regulations to protect drinking water supply.

For purposes of this subparagraph (1), "number of acres justified as necessary for a surface drinking water source" means according to guidelines of the United States natural

resource conservation service and according to analyses of surface drinking water capacity needs conducted by one or more registered professional engineers.

(2) The use of eminent domain authority to acquire private property in the unincorporated area of a county for use as an airport, airport system, or aviation facilities is prohibited, notwithstanding any provision of the law to the contrary, if the property to be condemned is located outside the geographic boundaries of the city or county operating the airport, airport system, or aviation facilities or outside the geographic boundaries of the member municipalities of the commission or authority. However, an acquiring agency may proceed with condemnation of property under these circumstances if the board of supervisors of the county where the property for which condemnation is sought is located holds a public hearing on the matter and subsequent to the hearing approves, by resolution, the condemnation action. This subparagraph does not apply if any of the following conditions is met:

(a) The property to be condemned is for an improvement to an existing airport, airport system, or aviation facilities if such improvement is required by federal law, regulation, or order or if such improvement is included in an airport layout plan approved by the federal aviation administration for the existing site of the airport, airport system, or aviation facilities.

(b) The property to be condemned has been zoned by a city or county for use as an airport, airport system, or aviation facilities.

(c) The property to be condemned is for a proposed airport, airport system, or aviation facilities that as of July 1, 2006, was designated in the federal aviation administration national plan for integrated airport services, and the property to be condemned is located within the county where at least one of the cities that will participate in

operation of the proposed airport, airport system, or aviation facilities is located.

Sec. 4. NEW SECTION. 6A.22A EXCEPTION FOR CERTAIN URBAN RENEWAL AREAS.

1. The requirement in section 6A.22, subsection 2, paragraph "a", subparagraph (5), that eminent domain authority be exercised on a parcel-by-parcel basis and the exception in that subparagraph (5) for project or acquisition plans with seventy-five percent or more of the area consisting of property in a slum or blighted condition, take effect October 1, 2006. However, if an acquiring agency adopts a resolution after the date of enactment of this Act but before October 1, 2006, approving acquisition of property by eminent domain in that portion of an urban renewal area designated as a slum or blighted area, such requirement or exception shall not apply to any condemnation application seeking to condemn that property if the application is filed before October 1, 2007, with the chief judge of the judicial district of the county in which the property is located.

2. This section is repealed December 31, 2007.

Sec. 5. NEW SECTION. 6A.23 JUDICIAL REVIEW OF EMINENT DOMAIN AUTHORITY.

1. An owner of property described in an application for condemnation may bring an action challenging the exercise of eminent domain authority or the condemnation proceedings. Such action shall be commenced within thirty days after service of notice of assessment pursuant to section 6B.8 by the filing of a petition in district court. Service of the original notice upon the acquiring agency shall be as required in the rules of civil procedure. In addition to the owner of the property, a contract purchaser of record of the property or a tenant occupying the property under a recorded lease shall also have standing to bring such action.

2. An acquiring agency that proposes to acquire property by eminent domain may file a petition in district court

seeking a determination and declaration that its finding of public use, public purpose, or public improvement necessary to support the taking meets the definition of those terms. The action shall be commenced by the filing of a petition identifying all property owners whose property is proposed to be acquired, any contract purchaser of record of the property, and any tenant known to be occupying the property, and including a description of the properties proposed to be acquired and a statement of the public use, public purpose, or public improvement supporting the acquisition of the property by eminent domain. The original notice shall be served as required by the rules of civil procedure on each property owner named in the petition and on any contract purchaser of record of the property and on any tenant occupying the property under a recorded lease. Such action may be commenced by an acquiring agency at any time prior to the filing of an application for condemnation pursuant to section 6B.3.

3. For any action brought under this section, the burden of proof shall be on the acquiring agency to prove by a preponderance of the evidence that the finding of public use, public purpose, or public improvement meets the definition of those terms. If a property owner or a contract purchaser of record or a tenant occupying the property under a recorded lease prevails in an action brought under this section, the acquiring agency shall be required to pay the costs, including reasonable attorney fees, of the adverse party.

Sec. 6. Section 6B.2B, Code 2005, is amended to read as follows:

6B.2B ACQUISITION NEGOTIATION STATEMENT-OF-RIGHTS.

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 or less than the value determined under the acquiring agency's waiver procedure established pursuant to section 6B.54, subsection 2, for acquisition of property with a low fair market value. A purchase offer made by an acquiring agency shall include provisions for payment to the owner of expenses, including relocation expenses, expenses listed in section 6B.54, subsection 10, and other expenses required by law to be paid by an acquiring agency to a condemnee. However, an in the alternative, the acquiring agency may make, and the owner may accept, a purchase offer from the acquiring agency that is an amount equal to one hundred thirty percent of the appraisal amount plus payment to the owner of expenses listed in section 6B.54, subsection 10, once those expenses have been determined. If the owner accepts such a purchase offer, the owner is barred from claiming payment from the acquiring agency for any other expenses allowed by law. An acquiring agency need not make an offer in excess of that amount the amounts described in this section 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. The option to make an alternative purchase offer does not apply when property is being acquired for street and highway projects undertaken by the state, a county, or a city.

Sec. 7. NEW SECTION. 6B.2D NOTICE OF INTENT TO APPROVE ACQUISITION OF PROPERTY BY EMINENT DOMAIN.

1. The acquiring agency shall send notice of a proposed resolution, motion, or other document authorizing acquisition of property by eminent domain to each property owner whose property is proposed to be acquired by eminent domain, to any contract purchaser of record of the property, and to any tenant known to be occupying the property at least fourteen

days prior to the date of the meeting at which such proposed authorization will be considered for adoption by the acquiring agency. The notice shall include the date, time, and place of the meeting and a statement that the persons receiving the notice have a right to attend the meeting and to voice objection to the proposed acquisition of the property. The notice shall include a copy of the proposed resolution, motion, or other document authorizing acquisition by eminent domain. The notice shall also include the same statement of individual rights that is required by section 6B.2A.

2. This section shall not apply to the following:

- a. Street and highway projects undertaken by the state, a county, or a city.
- b. Projects undertaken by a municipal utility.
- c. Projects undertaken by a city enterprise providing services of sewer systems, storm water drainage systems, sewage treatment, solid waste collection, or solid waste disposal.
- d. Projects undertaken by a county enterprise providing services described in section 331.461, subsection 2, paragraphs "b" and "f".

Sec. 8. Section 6B.3, subsection 1, paragraph d, Code 2005, is amended to read as follows:

d. The purpose for which condemnation is sought. ~~For purposes of section 6B.4A, if condemnation of agricultural land is sought by a city or county, or an agency of a city or county, for location of an industry as that term is defined in section 260B.2, the application shall so state. However, the city or county shall not be required to disclose information on an industrial prospect with which the city or county is currently negotiating.~~

Sec. 9. Section 6B.3, subsection 2, Code 2005, is amended to read as follows:

2. The applicant shall mail a copy of the application by certified mail to the owner at the owner's last known address,

to any contract purchaser of record of the property, to any tenant known to be occupying the property, 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, contract purchaser of record, tenant known to be occupying the property, record lienholders, and record 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.3, subsection 3, unnumbered paragraph 2, Code 2005, is amended to read as follows:

When indexed, the proceeding is considered pending so as to charge all persons not having an interest in the property with notice of its pendency, and while pending no interest can be acquired by the third parties in the property against the rights of the applicant. If the appraisal of damages by the commission pursuant to section 6B.14 is not made within one hundred twenty days of indexing, the proceedings instituted under this section are terminated and all rights and interests of the applicant arising out of the application for condemnation terminate. The applicant may reinstitute a new condemnation proceeding at any time. The reinstated proceedings are entirely new proceedings and not a revival of the terminated proceeding.

Sec. 11. NEW SECTION. 6B.3A CHALLENGE BY OWNER.

An owner of property described in an application for condemnation may bring an action to challenge the exercise of eminent domain authority or the condemnation proceedings in the district court of the county in which the private property is situated as provided in section 6A.23.

Sec. 12. Section 6B.8, Code 2005, 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 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 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 260B.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.~~

Sec. 13. Section 6B.14, unnumbered paragraph 2, Code 2005, is amended to read as follows:

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. When deliberating in closed session, the meeting is closed to all persons who are not commissioners except for personnel from the sheriff's office

if such personnel is requested by the commission. 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. However, if the commission is deliberating in closed session, and after deliberations commence the commission requires further information from a party or a witness, the commission shall notify the property owner and the acquiring agency that they are allowed to attend the meeting at which such additional information shall be provided but only for that period of time during which the additional information is being provided. The property owner and the acquiring agency shall be given a reasonable opportunity to attend the meeting. 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. 14. Section 6B.14, Code 2005, is amended by adding the following new unnumbered paragraph after unnumbered paragraph 2:

NEW UNNUMBERED PARAGRAPH. In determining fair market value of property, the commissioners shall not consider only the assessed value assigned to such property for purposes of property taxation.

Sec. 15. Section 6B.33, Code 2005, is amended to read as follows:

6B.33 COSTS AND ATTORNEY FEES.

The applicant acquiring agency shall pay all costs of the assessment made by the commissioners and reasonable attorney fees and costs, including the reasonable cost of one

appraisal, 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 condemnee shall submit an application for fees and costs prior to adjournment of the final meeting of the compensation commission held on the matter. The applicant acquiring agency 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 two hundred dollars and actual and necessary expenses incurred in the performance of their official duties. The applicant acquiring agency shall reimburse the county sheriff for the per diem and expense amounts paid by the sheriff to the members. The applicant acquiring agency 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 acquiring agency. The applicant acquiring agency shall also pay all costs occasioned by the appeal, including reasonable attorney fees and the reasonable cost incurred by the property owner for one appraisal 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. 16. Section 6B.42, subsection 1, paragraph a, Code 2005, is amended to read as follows:

a. The acquiring agency shall provide to the person, in addition to any other sums of money in payment of just compensation, the payments and assistance required by law, in accordance with chapter 316, as if the acquiring agency were a displacing agency under that chapter.

Sec. 17. Section 6B.45, Code 2005, 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 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. In determining fair market value of property, the acquiring agency shall not consider only the assessed value assigned to such property for purposes of property taxation. 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.

Only the appraisal prepared under this section shall be forwarded to the compensation commission by the acquiring agency.

Sec. 18. Section 6B.54, Code 2005, is amended to read as follows:

6B.54 ~~FEDERALLY-ASSISTED-PROJECT-AND-DISPLACING-ACTIVITIES~~  
 -- ACQUISITION POLICIES FOR ACQUIRING AGENCIES.

~~For any project-or-displacing-activity-that-has-received-or will-receive-federal-financial-assistance-as-defined-in section-316-17,-for-any-state-funded-projects,-or-for-any-other public use, public purpose, or public improvement for which condemnation is sought, an acquiring agency shall, at a minimum, satisfy the following policies:~~

1. Every reasonable and good faith effort shall be made to acquire expeditiously real property by negotiation as provided in section 6B.2B.

2. Real property shall be appraised as required by section 6B.45 before the initiation of negotiations, and the owner or the owner's designated representative shall be given an opportunity to accompany at least one appraiser of the acquiring agency during an inspection of the property, except that an acquiring agency may prescribe a procedure to waive the appraisal in cases involving the acquisition of property with a low fair market value. 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 before negotiations, the methods and factors used in arriving at an offered price for voluntary easements including the range of cash amount of each component.

3. Before the initiation of negotiations for real property, the acquiring agency shall establish an amount which it believes to be just compensation for the real property, and

shall make a prompt offer to acquire the property for the full amount established by the agency. In no event shall the amount be less than the ~~lowest appraisal of the~~ fair market value of the acquiring agency has established for the property or property interest pursuant to the appraisal required in section 6B.45 or less than the value determined under the acquiring agency's waiver procedure established pursuant to subsection 2. A purchase offer made by an acquiring agency shall include provisions for payment to the owner of expenses, including relocation expenses, expenses listed in subsection 10, and other expenses required by law to be paid by an acquiring agency to a condemnee. However, in the alternative, the acquiring agency may make, and the owner may accept, a purchase offer from the acquiring agency that is an amount equal to one hundred thirty percent of the appraisal amount plus payment to the owner of expenses listed in subsection 10, once those expenses have been determined. If the owner accepts such a purchase offer, the owner is barred from claiming payment from the acquiring agency for any other expenses allowed by law. In the case of 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, the amount shall not be less than the amount indicated by the methods and factors used in arriving at an offered price for a voluntary easement. The option to make an alternative purchase offer does not apply when property is being acquired for street and highway projects undertaken by the state, a county, or a city.

4. The construction or development of a public improvement shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling or to move the person's business or farm operation without at least ninety days' written notice of the date by which the move is required.

5. If after damages have been finally determined and paid, an owner or tenant is permitted to occupy the real property acquired on a rental basis for a short term or for a period subject to termination on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

6. In no event shall the time of condemnation be advanced, or negotiations or condemnation and the deposit of funds in court for the use of the owner be deferred, or any other coercive action be taken to compel an agreement on the price to be paid for the property.

7. If an interest in real property is to be acquired by exercise of the power of eminent domain, formal condemnation proceedings shall be instituted. The acquiring agency shall not intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of the owner's real property.

8. If the acquisition of only a portion of property would leave the owner with an uneconomical remnant, the acquiring agency shall offer to acquire that remnant. For the purposes of this chapter, an "uneconomical remnant" is a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property, where the acquiring agency determines that the parcel has little or no value or utility to the owner.

9. A person whose real property is being acquired in accordance with this chapter, after the person has been fully informed of the person's right to receive just compensation for the property, may donate the property, any part of the property, any interest in the property, or any compensation paid for it as the person may determine.

10. As soon as practicable after the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is earlier, the acquiring

agency shall reimburse the owner, to the extent the acquiring agency deems fair and reasonable, for expenses the owner necessarily incurred for all of the following:

a. Recording fees, transfer taxes, and similar expenses incidental to conveying the real property to the acquiring agency.

b. Penalty costs for full or partial prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property.

Payments and expenditures under this subsection are incident to and arise out of the program or project for which the acquisition activity takes place. Such payments and expenditures may be made from the funds made available for the program or project.

A person aggrieved by a determination as to the eligibility for or amount of a reimbursement may apply to have the matter reviewed by the acquiring agency or in accordance with section 316.9 if applicable.

11. An owner shall not be required to surrender possession of real property before the acquiring agency concerned pays the agreed purchase price.

12. After damages have been finally determined and paid, the acquiring agency may offer, and the owner may accept, an amount equal to thirty percent of the amount of damages plus payment to the owner of expenses listed in subsection 10, once those expenses have been determined. If the owner accepts such an offer, the owner is barred from claiming payment from the acquiring agency for any other expenses allowed by law. This subsection does not apply when property is being acquired for street and highway projects undertaken by the state, a county, or a city.

Sec. 19. Section 6B.55, unnumbered paragraph 1, Code 2005, is amended to read as follows:

~~For any program or project that has received or will receive federal financial assistance as defined in section~~

~~316.17, for any state-funded projects, or for any other public use, public purpose, or public improvement for which condemnation is sought, an acquiring agency shall at a minimum satisfy the following policies:~~

Sec. 20. Section 6B.56, subsection 1, Code 2005, is amended to read as follows:

1. If real property condemned pursuant to this chapter is not used for the purpose stated in the application filed pursuant to section 6B.3 and the condemner acquiring agency seeks to dispose of the real property, the condemner acquiring agency shall first offer the property for sale to the prior owner of the condemned property as provided in this section. If real property condemned pursuant to this chapter is used for the purpose stated in the application filed pursuant to section 6B.3 and the acquiring agency seeks to dispose of the real property by sale to a private person or entity within five years after acquisition of the property, the acquiring agency shall first offer the property for sale to the prior owner of the condemned property as provided in this section. For purposes of this section, the prior owner of the real property includes the successor in interest of the real property.

Sec. 21. Section 6B.56, subsection 2, Code 2005, is amended to read as follows:

2. Before the real property may be offered for sale to the general public, the condemner acquiring agency shall notify the prior owner of the real property condemned in writing of the condemner's acquiring agency's intent to dispose of the real property, of the current appraised value of the real property, and of the prior owner's right to purchase the real property within sixty days from the date the notice is served at a price equal to the current appraised value of the real property or the fair market value of the property at the time it was acquired by the acquiring agency from the prior owner plus cleanup costs incurred by the acquiring agency, whichever

is less. However, the current appraised value of the real property shall be the purchase price to be paid by the previous owner if any other amount would result in a loss of federal funding for projects funded in whole or in part with federal funds. The notice sent by the condemner acquiring agency as provided in this subsection shall be filed with the office of the recorder in the county in which the real property is located.

For purposes of this subsection, "cleanup costs" means costs incurred to abate a nuisance or a public nuisance as those terms are defined in chapters 657 and 657A and costs incurred to recycle and remediate land pursuant to chapter 455H.

Sec. 22. Section 6B.56, subsection 3, Code 2005, is amended to read as follows:

3. If the prior owner elects to purchase the real property at the price established in subsection 2, before the expiration of the sixty-day period, the prior owner shall notify the condemner acquiring agency in writing of this intention and file a copy of this notice with the office of the recorder in the county in which the real property is located.

Sec. 23. NEW SECTION. 6B.56A DISPOSITION OF CONDEMNED PROPERTY -- FIVE-YEAR TIME PERIOD.

1. When five years have elapsed since property was condemned and the property has not been used for the purpose stated in the application filed pursuant to section 6B.3, and the acquiring agency has not taken action to dispose of the property pursuant to section 6B.56, the acquiring agency shall, within sixty days, adopt a resolution reaffirming the purpose for which the property will be used or offering the property for sale to the prior owner at a price as provided in section 6B.56. If the resolution adopted approves an offer of sale to the prior owner, the offer shall be made in writing and mailed by certified mail to the prior owner. The prior

owner has one hundred eighty days after the offer is mailed to purchase the property from the acquiring agency.

2. If the acquiring agency has not adopted a resolution described in subsection 1 within the sixty-day time period, the prior owner may, in writing, petition the acquiring agency to offer the property for sale to the prior owner at a price as provided in section 6B.56. Within sixty days after receipt of such a petition, the acquiring agency shall adopt a resolution described in subsection 1. If the acquiring agency does not adopt such a resolution within sixty days after receipt of the petition, the acquiring agency is deemed to have offered the property for sale to the prior owner.

3. The acquiring agency shall give written notice to the owner of the right to purchase the property under this section at the time damages are paid to the owner.

4. This section does not apply to property acquired for street and highway projects undertaken by the state, a county, or a city.

Sec. 24. Section 6B.57, Code 2005, is amended to read as follows:

6B.57 PROCEDURAL COMPLIANCE.

If 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, or to any tenant known to be occupying such property if notices or documents are required to be served, sent, or provided to such a person, but fails to provide the notice or documents to the owner and any contract purchaser, or to any tenant known to be occupying the property if applicable, 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 or such failure does not unreasonably prejudice the owner or any contract purchaser.

Sec. 25. Section 6B.58, Code 2005, is amended to read as follows:

6B.58 ACQUIRING AGENCY -- DEFINITION.

For purposes of this chapter, an "acquiring agency" means the state of Iowa or any person or entity conferred the right by statute to condemn private property or to otherwise exercise the power of eminent domain. In the exercise of eminent domain power, the words "applicant" and "condemner" mean acquiring agency as defined in this section, unless the context clearly requires otherwise.

Sec. 26. NEW SECTION. 6B.60 RENTAL CHARGES PROHIBITED.

Rent shall not be charged to a person in possession of the property and shall not accrue against the property owner until all or a portion of the compensation commission award has been paid to the condemnee pursuant to section 6B.25.

Sec. 27. NEW SECTION. 6B.61 APPROVAL OF LOCAL ELECTED OFFICIALS REQUIRED.

Notwithstanding any provision of law to the contrary, any entity created by or on behalf of one or more political subdivisions and granted, by statute, eminent domain authority to acquire property shall not exercise such authority outside the jurisdictional limits of the political subdivisions participating in the entity at the time of such exercise of authority without first presenting the proposal to acquire such property by eminent domain to the board of supervisors of each county where the property is located and such proposal receives the approval, by resolution, of each applicable board of supervisors. However, this section does not apply to an entity created by or on behalf of one or more political subdivisions if the entity is authorized by statute to act as a political subdivision and if this section would limit the ability of the entity to comply with requirements or limitations imposed by the Internal Revenue Code to preserve the tax exemption of interest payable on bonds or obligations of the entity acting as a political subdivision.

This section does not apply to a person issued a certificate of public convenience, use, and necessity under chapter 476A. This section does not apply to property condemned by or on behalf of a multistate entity created to provide drinking water that has received or is receiving federal funds, but only if such property is to be acquired for water transmission and service lines, pump stations, water storage tanks, meter houses and vaults, related appurtenances, or supporting utilities.

Sec. 28. Section 28F.11, Code 2005, is amended to read as follows:

28F.11 EMINENT DOMAIN.

Any public agency participating in an agreement authorizing the joint exercise of governmental powers pursuant to this chapter may exercise its power of eminent domain to acquire interests in property, under provisions of law then in effect and applicable to the public agency, for the use of the entity created to carry out the agreement, provided that the power of eminent domain is not used to acquire interests in property which is part of a system of facilities in existence, under construction, or planned, for the generation, transmission or sale of electric power. In the exercise of the power of eminent domain, the public agency shall proceed in the manner provided by chapter 6B. Any interests in property acquired are acquired for a public purpose, as defined in chapter 6A, of the condemning public agency, and the payment of the costs of the acquisition may be made pursuant to the agreement or to any separate agreement between the public agency and the entity or the other public agencies participating in the entity or any of them. Upon payment of costs, any property acquired is the property of the entity.

Sec. 29. Section 327I.7, subsection 4, Code 2005, is amended to read as follows:

4. Exercise the power of eminent domain consistent with the provisions of chapters 6A and 6B.

Sec. 30. Section 330A.8, subsection 11, Code 2005, is amended to read as follows:

11. To have the power of eminent domain, ~~such power to be exercised in the manner provided by law for municipal corporations of this state but only as provided in section 330A.13.~~

Sec. 31. Section 346.27, subsection 9, paragraph b, Code 2005, is amended to read as follows:

b. To acquire in the corporate name of the authority the fee simple title to the real property located within the area by purchase, gift, devise, or by the exercise of the power of eminent domain consistent with the provisions of chapters 6A and 6B, or to take possession of real estate by lease.

Sec. 32. Section 364.4, subsection 1, Code 2005, is amended to read as follows:

1. Acquire, hold, and dispose of property outside the city in the same manner as within. However, the power of a city to acquire property outside the city does not include the power to acquire property outside the city by eminent domain, except for the following, subject to the provisions of chapters 6A and 6B:

a. The operation of a city utility as defined in section 362.2.

b. The operation of a city franchise conferred the authority to condemn private property under section 364.2.

c. The operation of a combined utility system as defined in section 384.80.

d. The operation of a municipal airport.

e. The operation of a landfill or other solid waste disposal or processing site.

f. The use of property for public streets and highways.

g. The operation of a multistate entity, of which the city is a participating member, created to provide drinking water that has received or is receiving federal funds, but only if such property is to be acquired for water transmission and

service lines, pump stations, water storage tanks, meter houses and vaults, related appurtenances, or supporting utilities.

The exceptions provided in paragraphs "a" through "c" apply only to the extent the city had this power prior to July 1, 2006.

Sec. 33. Section 389.3, unnumbered paragraph 2, Code 2005, is amended to read as follows:

A joint water utility is a political subdivision and an instrumentality of municipal government. The statutory powers, duties, and limitations conferred upon a city utility apply to a joint water utility, except that title to property of a joint water utility may be held in the name of the joint water utility. The joint water utility board shall have all powers and authority of a city with respect to property which is held by the joint water utility. A joint water utility shall have the power of eminent domain, including the powers, duties, and limitations conferred upon a city in chapters 6A and 6B, for the purposes of constructing and operating a joint water utility.

Sec. 34. Section 403.2, subsection 4, Code 2005, is amended to read as follows:

4. It is further found and declared that the powers conferred by this chapter are for public uses and purposes for which public money may be expended and for which the power of eminent domain, to the extent authorized, and police power exercised; and that the necessity in the public interest for the provisions herein enacted is hereby declared as a matter of legislative determination.

Sec. 35. Section 403.5, subsection 4, paragraph b, subparagraph (2), Code 2005, is amended to read as follows:

(2) If it is to be developed for nonresidential uses, the local governing body shall determine that such nonresidential uses are necessary and appropriate to facilitate the proper growth and development of the community in accordance with sound planning standards and local community objectives.

PARAGRAPH DIVIDED. The acquisition of open land authorized in subparagraphs (1) and (2) may require the exercise of governmental action, as provided in this chapter, because of defective or unusual conditions of title, diversity of ownership, tax delinquency, improper subdivisions, outmoded street patterns, deterioration of site, economic disuse, unsuitable topography or faulty lot layouts, or because of the need for the correlation of the area with other areas of a municipality by streets and modern traffic requirements, or any combination of such factors or other conditions which retard development of the area. If such governmental action involves the exercise of eminent domain authority, the municipality is subject to the limitations of this chapter and chapters 6A and 6B.

Sec. 36. Section 403.5, subsection 4, unnumbered paragraph 2, Code 2005, is amended by striking the unnumbered paragraph.

Sec. 37. Section 403.6, subsection 3, Code 2005, is amended to read as follows:

3. Within its area of operation, to enter into any building or property in any urban renewal area in order to make inspections, surveys, appraisals, soundings or test borings, and to obtain an order for this purpose from a court of competent jurisdiction in the event entry is denied or resisted; to acquire by purchase, lease, option, gift, grant, bequest, devise, eminent domain or otherwise, any real property, or personal property for administrative purposes, together with any improvements thereon; to hold, improve, clear or prepare for redevelopment any such property; to mortgage, pledge, hypothecate or otherwise encumber or dispose of any real property; to insure or provide for the insurance of any real or personal property or operations of the municipality against any risks or hazards, including the power to pay premiums on any such insurance; and to enter into any contracts necessary to effectuate the purposes of this chapter:--Provided, however, that no statutory provision with

~~respect-to-the-acquisition-clearance-or-disposition-of property-by-public-bodies-shall-restrict-a-municipality-or other-public-body-exercising-powers-hereunder-in-the-exercise of-such-functions-with-respect-to-an-urban-renewal-project, unless-the-legislature-shall-specifically-so-state. A municipality or other public body exercising powers under this chapter with respect to the acquisition, clearance, or disposition of property shall not be restricted by any other statutory provision in the exercise of such powers unless such statutory provision specifically states its application to this chapter or unless this chapter specifically applies restrictions contained in another statutory provision to the powers that may be exercised under this chapter.~~

Sec. 38. Section 403.7, Code 2005, is amended to read as follows:

403.7 CONDEMNATION OF PROPERTY.

1. A municipality shall have the right to acquire by condemnation any interest in real property, including a fee simple title thereto, which it may deem necessary for or in connection with an urban renewal project under this chapter, subject to the limitations on eminent domain authority in chapter 6A. However, a municipality shall not condemn agricultural land included within an economic development area for any use unless the owner of the agricultural land consents to condemnation or unless ~~the agricultural land is to be acquired for industry as that term is defined in section 260E-2~~ the municipality determines that the land is necessary or useful for any of the following:

a. The operation of a city utility as defined in section 362.2.

b. The operation of a city franchise conferred the authority to condemn private property under section 364.2.

c. The operation of a combined utility system as defined in section 384.80.

2. A municipality may shall exercise the power of eminent domain in the manner provided in chapter 6B~~7~~-and-Acts ~~amendatory-to-that-chapter-or-supplementary-to-that-chapter,~~ ~~or-it-may-exercise-the-power-of-eminent-domain-in-the-manner-now-or-which-may-be-hereafter-provided-by-any-other-statutory-provisions-for-the-exercise-of-the-power-of-eminent-domain.~~ Property already devoted to a public use may be acquired in like manner. However, real property belonging to the state, or any political subdivision of this state, shall not be acquired without its consent, and real property or any right or interest in the property owned by any public utility company, pipeline company, railway or transportation company vested with the right of eminent domain under the laws of this state, shall not be acquired without the consent of the company, or without first securing, after due notice to the company and after hearing, a certificate authorizing condemnation of the property from the board, commission, or body having the authority to grant a certificate authorizing condemnation.

3. In a condemnation proceeding, if a municipality proposes to take a part of a lot or parcel of real property, the municipality shall also take the remaining part of the lot or parcel if requested by the owner.

Sec. 39. Section 403A.3, subsection 4, Code 2005, is amended to read as follows:

4. To lease or rent any dwellings, accommodations, lands, buildings, structures or facilities embraced in any project and (subject to the limitations contained in this chapter with respect to the rental of dwellings in housing projects) to establish and revise the rents or charges therefor; to own, hold and improve real or personal property; to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise or otherwise any real or personal property or any interest therein; to acquire by the exercise of the power of eminent domain any real property subject to section 403A.20;

to sell, lease, exchange, transfer, assign, pledge or dispose of any real or personal property or any interest therein; to insure or provide for the insurance, in any stock or mutual company of any real or personal property or operations of the municipality against any risks or hazards; to procure or agree to the procurement of federal or state government insurance or guarantees of the payment of any bonds or parts thereof issued by a municipality, including the power to pay premiums on any such insurance.

Sec. 40. Section 403A.20, Code 2005, is amended to read as follows:

#### 403A.20 CONDEMNATION OF PROPERTY.

A municipality shall have the right to acquire by condemnation any interest in real property, including a fee simple title thereto, which it may deem necessary for or in connection with a municipal housing project under this chapter, subject to the limitations on eminent domain authority in chapter 6A. A municipality may shall exercise the power of eminent domain in the manner provided in chapter 6B~~7~~-and-acts-amendatory-thereof-or-supplementary-thereto~~7~~-or-it-may-exercise-the-power-of-eminent-domain-in-the-manner-now-or-which-may-be-hereafter-provided-by-any-other-statutory-provisions-for-the-exercise-of-the-power-of-eminent-domain. Property already devoted to a public use may be acquired in like manner:~~---Provided, that no.~~ However, real property belonging to the state, or any political subdivision thereof, may shall not be acquired without its consent, provided further-that-no and real property or any right or interest therein in the property owned by any public utility company, pipeline company, railway or transportation company vested with the right of eminent domain under the laws of this state, shall not be acquired without the consent of such the company, or without first securing, after due notice to such the company and after hearing, a certificate authorizing condemnation of such property from the board, commission, or

body having the authority to grant a certificate authorizing condemnation.

Sec. 41. Section 422.7, Code Supplement 2005, is amended by adding the following new subsection:

NEW SUBSECTION. 45. Subtract, to the extent included, the amount of ordinary or capital gain realized by the taxpayer as a result of the involuntary conversion of property due to eminent domain. However, if the total amount of such realized ordinary or capital gain is not recognized because the converted property is replaced with property that is similar to, or related in use to, the converted property, the amount of such realized ordinary or capital gain shall not be subtracted under this subsection until the remaining realized ordinary or capital gain is subject to federal taxation or until the time of disposition of the replacement property as provided under rules of the director. The subtraction allowed under this subsection shall not alter the basis as established for federal tax purposes of any property owned by the taxpayer.

Sec. 42. Section 422.35, Code Supplement 2005, is amended by adding the following new subsection:

NEW SUBSECTION. 22. Subtract, to the extent included, the amount of ordinary or capital gain realized by the taxpayer as a result of the involuntary conversion of property due to eminent domain. However, if the total amount of such realized ordinary or capital gain is not recognized because the converted property is replaced with property that is similar to, or related in use to, the converted property, the amount of such realized ordinary or capital gain shall not be subtracted under this subsection until the remaining realized ordinary or capital gain is subject to federal taxation or until the time of disposition of the replacement property as provided under rules of the director. The subtraction allowed under this subsection shall not alter the basis as established for federal tax purposes of any property owned by the taxpayer.

Sec. 43. Section 422.73, Code 2005, is amended by adding the following new subsection:

NEW SUBSECTION. 3. Notwithstanding subsection 1, a claim for credit or refund of the income tax paid on the gain realized from the involuntary conversion of property due to a condemnation action is timely filed with the department as provided in this subsection if the taxpayer's claim is the result of the reacquisition by the taxpayer, as the prior owner, of the property condemned pursuant to section 6B.56, subsection 2, or section 6B.56A. The claim under this subsection shall be timely filed only if the claim is made prior to the end of the sixth month following the month in which the reacquisition occurs.

Sec. 44. Section 468.128, Code 2005, is amended to read as follows:

468.128 IMPOUNDING AREAS AND EROSION CONTROL DEVICES.

Levee and drainage districts are empowered to construct impounding areas and other flood and erosion control devices to protect lands of the district and drainage structures and may provide ways for access to improvements for the operation or protection thereof, where the cost is not excessive in consideration of the value to the district. Necessary lands or easements may be acquired within or without the district by purchase, lease or agreement, or by exercise of the right of eminent domain as provided for in chapter 6B and may be procured and construction undertaken either independently or in co-operation with other districts, individuals, or any federal or state agency or political subdivision.

Sec. 45. Section 468.146, subsection 1, Code 2005, is amended to read as follows:

1. When a drainage district is established and a satisfactory outlet cannot be obtained except through lands in an adjoining county, or when an improved outlet cannot be obtained except through lands downstream from the district boundary, the board shall have the power to purchase a right

of way, to construct and maintain such outlets, and to pay all necessary costs and expenses out of the district funds. The board shall have similar authority relative to the construction and maintenance of silt basins upstream from the district boundary. In case the board and the owners of the land required for such outlet or silt basin cannot agree upon the price to be paid as compensation for the land taken or used, the board is hereby empowered to exercise the right of eminent domain as provided for in chapter 6B in order to procure such necessary right of way.

Sec. 46. Section 468.366, Code 2005, is amended to read as follows:

468.366 SETTLING BASIN -- CONDEMNATION.

If, before a district operating a pumping plant is completed and accepted, it appears that portions of the lands within said district are wet or nonproductive by reason of the floods or overflow waters from one or more streams running into, through, or along said district and that said district or some other district of which such district shall have formed a part, shall have provided a settling basin to care for the said floods and overflow waters of said stream or watercourse, but no channel to said settling basin has been provided, said board or boards are hereby empowered to lease, buy, or condemn the necessary lands within or without the district for such channel. Proceedings to condemn shall be as provided in chapter 6B for the exercise of the right of eminent domain.

Sec. 47. CODE EDITOR DIRECTIVE.

1. The Code editor is directed to make the following transfers:
  - a. Section 6B.10 to become subsection 2 of section 6B.9.
  - b. Section 6B.20 to become subsection 4 of section 6B.18.
  - c. Section 6B.27 to become subsection 2 of section 6B.26.
  - d. Sections 6B.39 and 6B.41 to become subsections 3 and 4, respectively, of section 6B.38.

e. Section 6B.43 to become unnumbered paragraph 3 of section 6B.4.

f. Sections 6B.47 through 6B.51 to become subsections 2 through 6, respectively, of section 6B.46.

g. Section 6B.58 to become subsection 2 of section 6B.1.

2. The Code editor is directed to correct internal references in the Code as necessary due to enactment of this section.

Sec. 48. Section 6B.4A, Code 2005, is repealed.

Sec. 49. EFFECTIVE AND APPLICABILITY DATES.

1. The section of this Act enacting section 422.73, subsection 3, being deemed of immediate importance, takes effect upon enactment and applies to reacquisitions of property occurring on or after the effective date of that section of this Act.

2. The sections of this Act enacting section 422.7, subsection 45, and section 422.35, subsection 22, apply retroactively to January 1, 2006, for tax years beginning on or after that date.

3. The sections of this Act amending sections 6B.2B and 6B.14, unnumbered paragraph 2, the portion of the section of this Act amending section 6B.54, subsection 3, and the section of this Act enacting section 6B.2D take effect January 1, 2007.

4. The sections of this Act amending section 6B.3, subsection 3, section 6B.56, subsection 2, sections 6B.57 and 6B.58, being deemed of immediate importance, take effect upon enactment.

5. The remainder of this Act, being deemed of immediate importance, takes effect upon enactment and applies to applications for condemnation filed pursuant to section 6B.3 on or after the date of enactment, with the following exceptions:

a. The section of this Act enacting section 6A.23 applies to applications for condemnation pending on the date of

enactment of this Act if the appropriate parties have not been served with a notice of assessment pursuant to section 6B.8 as of the date of enactment of this Act.

b. The section of this Act amending section 6B.33 and that portion of the section of this Act enacting 6B.54, subsection 12, apply to applications for condemnation filed pursuant to section 6B.3 and pending on the date of enactment of this Act if the appraisal report required under section 6B.14 has not been filed with the sheriff as of the date of enactment of this Act.

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CHRISTOPHER C. RANTS  
Speaker of the House

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JEFFREY M. LAMBERTI  
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2351, Eighty-first General Assembly.

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MARGARET THOMSON  
Chief Clerk of the House

Approved \_\_\_\_\_, 2006

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THOMAS J. VILSACK  
Governor