

**House File 603 - Introduced**

HOUSE FILE 603  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HF 64)

**A BILL FOR**

1 An Act relating to eminent domain authority and procedures and  
2 including effective date and applicability provisions.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 6A.1, Code 2011, is amended to read as  
2 follows:

3 **6A.1 Exercise of power by state.**

4 1. Proceedings may be instituted and maintained by the  
5 state of Iowa, or for the use and benefit thereof, for the  
6 condemnation of such private property as may be necessary  
7 for any public improvement which the general assembly has  
8 authorized to be undertaken by the state, and for which an  
9 available appropriation has been made. The executive council  
10 shall institute and maintain such proceedings in case authority  
11 to so do be not otherwise delegated.

12 2. All proceedings instituted and maintained by the state  
13 of Iowa for the condemnation of private property shall not  
14 commence without the signed authorization of the governor if  
15 the total amount of private property to be condemned exceeds  
16 five hundred acres.

17 3. Notwithstanding any provision of law to the contrary,  
18 the condemnation authority granted in this section shall not  
19 extend to the department of natural resources if the department  
20 is seeking to acquire real property for purposes of carrying  
21 out a duty related to the development or maintenance of  
22 the recreation resources of the state, including planning,  
23 acquisition, and development of recreational projects, and  
24 areas and facilities related to such projects.

25 **Sec. 2. NEW SECTION. 6A.15 Property on state historic**  
26 **registry.**

27 1. Property listed on the state register of historic places  
28 maintained by the historical division of the department of  
29 cultural affairs shall not be removed from the register solely  
30 for the purpose of allowing acquisition of the property by  
31 condemnation.

32 2. Property listed on the state register of historic places  
33 maintained by the historical division of the department of  
34 cultural affairs shall not be condemned by the state or a  
35 political subdivision unless a joint resolution authorizing

1 commencement of the condemnation proceedings is approved by a  
2 vote of at least two-thirds of the members of both chambers of  
3 the general assembly and signed by the governor.

4 Sec. 3. Section 6A.22, subsection 2, paragraph c,  
5 subparagraph (1), Code 2011, is amended to read as follows:

6 (1) (a) If private property is to be condemned for  
7 development or creation of a lake, only that number of acres  
8 justified as reasonable and necessary for a surface drinking  
9 water source, and not otherwise acquired, may be condemned.  
10 ~~In addition~~ Prior to making a determination that such lake  
11 development or creation is reasonable and necessary, the  
12 acquiring agency shall ~~conduct a review of~~ demonstrate by clear  
13 and convincing evidence that no other prudent and feasible  
14 ~~alternatives to~~ alternative for provision of a drinking  
15 water source ~~prior to making a determination that such lake~~  
16 ~~development or creation is reasonable and necessary~~ exists.  
17 Development or creation of a lake as a surface drinking water  
18 source includes all of the following:

19 (i) Construction of the dam, including sites for suitable  
20 borrow material and the auxiliary spillway.

21 (ii) The water supply pool.

22 (iii) The sediment pool.

23 (iv) The flood control pool.

24 (v) The floodwater retarding pool.

25 (vi) The surrounding area upstream of the dam no higher in  
26 elevation than the top of the dam's elevation.

27 (vii) The appropriate setback distance required by state or  
28 federal laws and regulations to protect drinking water supply.

29 (b) For purposes of this subparagraph (1), "*number of acres*  
30 *justified as reasonable and necessary for a surface drinking*  
31 *water source*" means according to guidelines of the United  
32 States natural resource conservation service and according to  
33 analyses of ~~surface~~ drinking water capacity needs conducted  
34 by one or more registered professional engineers. The data  
35 and information used by the registered professional engineers

1 to analyze and determine the drinking water capacity needs  
2 under this subparagraph shall first be approved by a committee  
3 appointed by the affected property owners and comprised of more  
4 than fifty percent property owners affected by the proposed  
5 condemnation action. The committee shall hold at least one  
6 public meeting relating to such data and information prior to  
7 approval and submission of the data and information to the  
8 registered professional engineers.

9 (c) A second review or analysis of the drinking water  
10 capacity needs may be requested by any landowner affected  
11 by the proposed condemnation action, and the engineer to  
12 perform the second review or analysis shall be selected by the  
13 committee established under subparagraph division (b). The  
14 acquiring agency shall be responsible for paying the fees and  
15 expenses of such an engineer.

16 (d) If private property is to be condemned for development  
17 or creation of a lake, the plans, analyses, applications,  
18 including any application for funding, and other planning  
19 activities of the acquiring agency shall not include or provide  
20 for the use of the lake for recreational purposes.

21 Sec. 4. Section 6A.22, subsection 2, Code 2011, is amended  
22 by adding the following new paragraph:

23 NEW PARAGRAPH. d. Notwithstanding paragraphs "a", "b", and  
24 "c", "public use", "public purpose", or "public improvement" does  
25 not include any project that receives a state appropriation or  
26 that receives or is awarded state funds or other funding by  
27 means of incentives, as authorized pursuant to chapter 12, 15,  
28 15A, 15E, 15F, 15G, or 16.

29 Sec. 5. Section 6A.24, subsection 3, Code 2011, is amended  
30 to read as follows:

31 3. For any action brought under this section, the burden  
32 of proof shall be on the acquiring agency to prove by a  
33 ~~preponderance of the~~ clear and convincing evidence that the  
34 finding of public use, public purpose, or public improvement  
35 meets the definition of those terms. If a property owner or a

1 contract purchaser of record or a tenant occupying the property  
2 under a recorded lease prevails in an action brought under  
3 this section, the acquiring agency shall be required to pay  
4 the costs, including reasonable attorney fees, of the adverse  
5 party.

6 Sec. 6. Section 6B.2C, Code 2011, is amended to read as  
7 follows:

8 **6B.2C Approval of the public improvement.**

9 The authority to condemn is not conferred, and the  
10 condemnation proceedings shall not commence, unless the  
11 governing body for the acquiring agency ~~approves~~, by  
12 resolution, declares that adequate funding for the public  
13 improvement has been or is reasonably certain to be secured,  
14 that the use of condemnation for the public improvement is  
15 approved, and that there is a reasonable expectation the  
16 applicant will be able to achieve its public purpose, comply  
17 with all applicable standards, and obtain the necessary  
18 permits.

19 Sec. 7. Section 6B.4, unnumbered paragraph 1, Code 2011, is  
20 amended to read as follows:

21 Annually the board of supervisors of a county shall appoint  
22 not less than twenty-eight residents of the county or of  
23 contiguous counties and the names of such persons shall be  
24 placed on a list and they shall be eligible to serve as members  
25 of a compensation commission. One-fourth of the persons  
26 appointed shall be owner-operators of agricultural property,  
27 one-fourth of the persons appointed shall be owners of city  
28 property, one-fourth shall be licensed real estate salespersons  
29 or real estate brokers, and one-fourth shall be persons having  
30 knowledge of property values in the county by reason of their  
31 occupation, such as bankers, auctioneers, property managers,  
32 property appraisers, and persons responsible for making loans  
33 on property.

34 Sec. 8. Section 6B.14, subsection 2, Code 2011, is amended  
35 to read as follows:

1 2. Prior to the meeting of the commission, the commission  
2 or a commissioner shall not communicate with the applicant,  
3 property owner, or tenant, or their agents, regarding the  
4 condemnation proceedings. The commissioners shall meet in  
5 open session to view the property and to receive evidence,  
6 ~~but may~~ and shall deliberate and vote in closed open session.  
7 However, if the session relates to condemnation undertaken by  
8 the department of transportation the commissioners shall meet  
9 in open session to view the property, receive evidence, and  
10 vote, but may deliberate in closed session. When deliberating  
11 in closed session, the meeting is closed to all persons who  
12 are not commissioners except for personnel from the sheriff's  
13 office if such personnel is requested by the commission. After  
14 deliberations commence, the commission and each commissioner is  
15 prohibited from communicating with any party to the proceeding  
16 unless such communication occurs in the presence of or with  
17 the consent of the property owner and other parties who  
18 appeared before the commission or their agents. However,  
19 if the commission is deliberating in closed session for a  
20 condemnation undertaken by the department of transportation,  
21 and after deliberations commence the commission requires  
22 further information from a party or a witness, the commission  
23 shall notify the property owner and the acquiring agency that  
24 they are allowed to attend the meeting at which such additional  
25 information shall be provided but only for that period of time  
26 during which the additional information is being provided.  
27 The property owner and the acquiring agency shall be given a  
28 reasonable opportunity to attend the meeting. The commission  
29 shall keep minutes of all its meetings showing the date, time,  
30 and place, the members present, and the action taken at each  
31 meeting. The minutes shall show the results of each vote taken  
32 and information sufficient to indicate the vote of each member  
33 present. ~~The vote of each member present shall be made public~~  
34 ~~at the open session.~~ The minutes shall be public records open  
35 to public inspection.

1     Sec. 9. Section 6B.54, subsection 10, paragraph a, Code  
2 2011, is amended by adding the following new subparagraph:  
3     NEW SUBPARAGRAPH. (3) Reasonable attorney fees and  
4 reasonable costs not to exceed one hundred thousand dollars,  
5 attributable to a determination that the creation of a lake  
6 through condemnation includes a future recreational use or that  
7 a violation of section 6A.22, subsection 2, paragraph "c",  
8 subparagraph (1), subparagraph division (d), has occurred, if  
9 such fees and costs are not otherwise provided under section  
10 6B.33.

11     Sec. 10. NEW SECTION. **6B.56B Disposition of condemned**  
12 **property — two-year time period.**

13     1. When two years have elapsed since property was condemned  
14 for the creation of a lake according to the requirements of  
15 section 6A.22, subsection 2, paragraph "c", subparagraph (1),  
16 and the property has not been used for or construction has not  
17 begun for the purpose stated in the application filed pursuant  
18 to section 6B.3, and the acquiring agency has not taken action  
19 to dispose of the property pursuant to section 6B.56, the  
20 acquiring agency shall, within sixty days, adopt a resolution  
21 offering the property for sale to the prior owner at a price as  
22 provided in section 6B.56. If the resolution adopted approves  
23 an offer of sale to the prior owner, the offer shall be made  
24 in writing and mailed by certified mail to the prior owner.  
25 The prior owner has one hundred eighty days after the offer is  
26 mailed to purchase the property from the acquiring agency.

27     2. If the acquiring agency has not adopted a resolution  
28 described in subsection 1 within the sixty-day time period, the  
29 prior owner may, in writing, petition the acquiring agency to  
30 offer the property for sale to the prior owner at a price as  
31 provided in section 6B.56. Within sixty days after receipt of  
32 such a petition, the acquiring agency shall adopt a resolution  
33 described in subsection 1. If the acquiring agency does not  
34 adopt such a resolution within sixty days after receipt of the  
35 petition, the acquiring agency is deemed to have offered the

1 property for sale to the prior owner.

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

5 Sec. 11. Section 316.4, subsection 1, Code 2011, is amended  
6 to read as follows:

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

25 Sec. 12. Section 364.4, subsection 1, paragraph a,  
26 unnumbered paragraph 1, Code 2011, is amended to read as  
27 follows:

28 Acquire, hold, and dispose of property outside the city in  
29 the same manner as within. However, the power of a city to  
30 acquire property outside the city does not include the power  
31 to acquire property outside the city by eminent domain, except  
32 if viable alternatives do not exist within the city and the  
33 acquisition of the property is necessary for the following,  
34 subject to the provisions of chapters 6A and 6B:

35 Sec. 13. Section 403.7, subsection 1, unnumbered paragraph



1 1, Code 2011, is amended to read as follows:

2 A municipality shall have the right to acquire by  
3 condemnation any interest in real property, including a fee  
4 simple title thereto, which it may deem necessary for or in  
5 connection with an urban renewal project under this chapter,  
6 subject to the limitations on eminent domain authority  
7 in ~~chapter~~ chapters 6A and 6B. However, a municipality  
8 shall not condemn agricultural land included within an  
9 economic development area for any use unless the owner of  
10 the agricultural land consents to condemnation or unless ~~the~~  
11 ~~municipality determines that the land is necessary or useful~~  
12 viable alternatives to the condemnation of agricultural land do  
13 not exist and the acquisition of the property is necessary for  
14 any of the following:

15 Sec. 14. NEW SECTION. 423B.11 Use of revenues —  
16 limitation.

17 The revenue raised by a local sales and services tax imposed  
18 under this chapter by a county shall not be expended for any  
19 purpose related to a project that includes the condemnation of  
20 private property for the creation of a lake according to the  
21 requirements of section 6A.22, subsection 2, paragraph "c",  
22 subparagraph (1), if the local sales and services tax has not  
23 been approved at election in the area where the property to be  
24 condemned is located.

25 Sec. 15. Section 455A.5, Code 2011, is amended by adding the  
26 following new subsection:

27 NEW SUBSECTION. 7. The authority granted to the commission  
28 to acquire real property for purposes of carrying out a  
29 duty related to development or maintenance of the recreation  
30 resources of the state, including planning, acquisition, and  
31 development of recreational projects, and areas and facilities  
32 related to such projects, shall not include the authority to  
33 acquire real property by eminent domain.

34 Sec. 16. Section 456A.24, subsection 2, unnumbered  
35 paragraph 1, Code 2011, is amended to read as follows:

1 Acquire by purchase, ~~condemnation~~, lease, agreement,  
2 gift, and devise lands or waters suitable for the purposes  
3 hereinafter enumerated, and rights-of-way thereto, and to  
4 maintain the same for the following purposes, ~~to-wit~~:

5 Sec. 17. Section 456A.24, Code 2011, is amended by adding  
6 the following new subsection:

7 NEW SUBSECTION. 15. The authority granted the department  
8 to acquire real property for any statutory purpose relating to  
9 the development or maintenance of the recreation resources of  
10 the state, including planning, acquisition, and development  
11 of recreational projects, and areas and facilities related to  
12 such projects, shall not include the authority to acquire real  
13 property by eminent domain.

14 Sec. 18. Section 461A.7, Code 2011, is amended to read as  
15 follows:

16 **461A.7 ~~Eminent domain~~ Purchase of lands — public parks.**

17 The commission may purchase ~~or condemn~~ lands from willing  
18 sellers for public parks. ~~No~~ A contract for the purchase of  
19 such public parks shall not be made to an amount in excess of  
20 funds appropriated therefor by the general assembly.

21 Sec. 19. Section 461A.10, Code 2011, is amended to read as  
22 follows:

23 **461A.10 Title to lands.**

24 The title to all lands purchased, ~~condemned~~, or donated,  
25 hereunder, for park ~~or highway~~ purposes and the title to all  
26 lands purchased, condemned, or donated hereunder for highway  
27 purposes, shall be taken in the name of the state and if  
28 thereafter it shall be deemed advisable to sell any portion of  
29 the land so purchased or condemned, the proceeds of such sale  
30 shall be placed to the credit of the said public state parks  
31 fund to be used for such park purposes.

32 Sec. 20. Section 463C.8, subsection 1, paragraph k, Code  
33 2011, is amended to read as follows:

34 k. The power to acquire, own, hold, administer, and dispose  
35 of property, except that such power is not a grant of authority

1 to acquire property by eminent domain.

2 Sec. 21. REPEAL. Sections 461A.9 and 461A.75, Code 2011,  
3 are repealed.

4 Sec. 22. EFFECTIVE UPON ENACTMENT AND APPLICABILITY. This  
5 Act, being deemed of immediate importance, takes effect upon  
6 enactment and applies to projects or condemnation proceedings  
7 pending or commenced on or after that date.

8 EXPLANATION

9 This bill makes changes relating to eminent domain authority  
10 and procedures.

11 The bill provides that proceedings for the acquisition of  
12 property by eminent domain shall not be instituted by the state  
13 without the signed authorization of the governor if the total  
14 amount of private property to be condemned exceeds 500 acres.

15 The bill changes the standard of proof from a preponderance  
16 of the evidence to clear and convincing evidence for an action  
17 brought in district court challenging the exercise of eminent  
18 domain authority or contesting condemnation proceedings. The  
19 bill adds reasonable attorney fees and reasonable costs that  
20 are attributable to certain condemnation proceedings relating  
21 to the creation of a lake, up to \$100,000, to the list of  
22 expenses reimbursable by an acquiring agency to a property  
23 owner.

24 The bill provides that property listed on the state register  
25 of historic places shall not be removed from the register  
26 solely for the purpose of allowing the property to be acquired  
27 by condemnation. The bill also provides that property on the  
28 state register of historic places may not be condemned unless  
29 a joint resolution authorizing the condemnation is approved  
30 by a vote of at least two-thirds of each house of the general  
31 assembly and signed by the governor.

32 The bill provides that the authority to condemn property is  
33 not conferred, and condemnation proceedings shall not commence,  
34 until the governing body of the acquiring agency has declared  
35 that adequate funding for the public improvement has been

1 secured or is reasonably certain to be secured.

2 Current Code section 6B.4 requires the 28 persons appointed  
3 by the board of supervisors to the list of persons eligible  
4 to serve on a compensation commission to be residents of that  
5 county. The bill allows such appointees to be residents of the  
6 county or residents of contiguous counties.

7 The bill provides that the compensation commission  
8 that meets to determine damages and appraise property in a  
9 condemnation proceeding shall deliberate and vote in open  
10 session. The bill also provides that, as an exception to  
11 the general prohibition from communicating with a party to  
12 the proceeding after deliberations commence, the commission  
13 and each commissioner is permitted such communication if it  
14 occurs in the presence of or with consent of the property  
15 owner and the other parties or their agents. The bill retains  
16 the compensation commission's ability to deliberate in  
17 closed session for condemnation proceedings undertaken by the  
18 department of transportation.

19 The bill provides that, for purposes of exercising eminent  
20 domain authority, "public use", "public purpose", or "public  
21 improvement" does not include any project that receives state  
22 funding or assistance through specified economic development,  
23 tourism, or community betterment programs.

24 The bill provides that if relocation of a business or  
25 farm operation is not economically feasible, the displaced  
26 person may apply for payment of the loss of existing business  
27 relationships because of the inability to relocate the business  
28 or farm operation to a location similar in economic advantage  
29 to the location from which the business or farm operation was  
30 moved.

31 The bill adds a condition to the circumstances in which a  
32 city may condemn land outside the city limits to provide that  
33 condemnation may occur if viable alternatives do not exist  
34 within the city and the acquisition of the land is necessary  
35 for the purposes stated in current law. The bill also amends

1 urban renewal law relating to the circumstances in which a  
2 municipality may condemn agricultural land within an economic  
3 development urban renewal area to provide that condemnation may  
4 occur if viable alternatives do not exist and the acquisition  
5 of the land is necessary for the purposes stated in current  
6 law.

7 The bill provides that the department of natural resources  
8 and the natural resource commission shall not exercise eminent  
9 domain authority to acquire real property for purposes of  
10 carrying out a duty related to development or maintenance of  
11 the recreation resources of the state, including planning,  
12 acquisition, and development of recreational projects, and  
13 areas and facilities related to such projects. The bill  
14 retains the department's authority to acquire property through  
15 condemnation for highway purposes.

16 The bill makes changes relating to eminent domain authority  
17 in relation to development or creation of a lake. The bill  
18 provides that, prior to making a determination that creation or  
19 development of a lake is reasonable and necessary, an acquiring  
20 agency must demonstrate by clear and convincing evidence that  
21 no other prudent and feasible alternative for provision of a  
22 drinking water source exists. The bill requires the data and  
23 information used by the registered professional engineers to  
24 analyze and determine the drinking water capacity needs to  
25 first be approved by a committee appointed by the affected  
26 property owners and comprised of more than 50 percent property  
27 owners affected by the proposed condemnation action. The  
28 committee is required to hold at least one public meeting  
29 relating to such data and information prior to approval and  
30 submission of the data and information to the registered  
31 professional engineers. The bill provides that a landowner  
32 affected by the proposed condemnation action may request a  
33 second review or analysis, and the engineer shall be selected  
34 by the committee appointed by the property owners affected by  
35 the proposed condemnation action. The bill further provides

1 that the acquiring agency shall pay for the services of such  
2 an engineer. The bill provides that if private property is to  
3 be condemned for development or creation of a lake, the plans,  
4 analyses, applications, including any application for funding,  
5 and other planning activities of the acquiring agency shall not  
6 include or provide for the use of the lake for recreational  
7 purposes.

8 The bill provides that when two years have elapsed since  
9 property was condemned for the creation of a lake and the  
10 property has not been used for or construction has not begun  
11 for the purpose stated in the application, and the acquiring  
12 agency has not taken action to dispose of the property pursuant  
13 to Code section 6B.56, the acquiring agency shall, within 60  
14 days, adopt a resolution offering the property for sale to the  
15 prior owner at a price as provided in Code section 6B.56. If  
16 the acquiring agency has not adopted a resolution within the  
17 60-day time period, the prior owner may petition the acquiring  
18 agency to offer the property for sale to the prior owner at a  
19 price as provided in Code section 6B.56. The bill requires the  
20 acquiring agency to give written notice to the owner at the  
21 time damages are paid to the owner of the right to purchase the  
22 property under such circumstances.

23 The bill provides that the revenue raised by a local sales  
24 and services tax imposed under Code chapter 423B by a county  
25 shall not be expended for any purpose related to a project  
26 that includes the condemnation of private property for the  
27 creation of a lake if the local sales and services tax has not  
28 been approved at election in the area where the property to be  
29 condemned is located.

30 The bill takes effect upon enactment and applies to projects  
31 or condemnation proceedings pending or commenced on or after  
32 that date.