

House File 64 - Introduced

HOUSE FILE 64

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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 shall not commence without the signed authorization of
14 the governor.

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

23 Sec. 2. NEW SECTION. **6A.15 Property on state historic**
24 **registry.**

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

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

32 (1) (a) If private property is to be condemned for
33 development or creation of a lake, only that number of acres
34 justified as reasonable and necessary for a surface drinking
35 water source, and not otherwise acquired, may be condemned.

1 ~~In addition~~ Prior to making a determination that such lake
2 development or creation is reasonable and necessary, the
3 acquiring agency shall ~~conduct a review of~~ demonstrate by clear
4 and convincing evidence that no other prudent and feasible
5 ~~alternatives to~~ alternative for provision of a drinking
6 water source ~~prior to making a determination that such lake~~
7 ~~development or creation is reasonable and necessary~~ exists.
8 Development or creation of a lake as a surface drinking water
9 source includes all of the following:

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

12 (ii) The water supply pool.

13 (iii) The sediment pool.

14 (iv) The flood control pool.

15 (v) The floodwater retarding pool.

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

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

20 (b) For purposes of this subparagraph (1), "*number of acres*
21 *justified as reasonable and necessary for a surface drinking*
22 *water source*" means according to guidelines of the United
23 States natural resource conservation service and according to
24 analyses of ~~surface~~ drinking water capacity needs conducted by
25 one or more registered professional engineers using standards
26 alternative to the federal guidelines. Any guidelines or
27 analyses related to future drinking water capacity needs shall
28 be based on the current rate of drinking water usage in the
29 area to be served by the surface drinking water source.

30 (c) Guidelines relating to drinking water capacity needs
31 in time of drought shall not be used in any analysis performed
32 pursuant to this subparagraph (1). An analysis performed
33 pursuant to this subparagraph (1) shall include information on
34 groundwater resources in the area and the potential for the use
35 of such resources to meet drinking water capacity needs.

1 (d) A second review or analysis may be requested by any
2 landowner affected by the proposed condemnation action, and the
3 engineer shall be selected by a committee of private landowners
4 affected by the proposed condemnation action. The acquiring
5 agency shall be responsible for paying the fees and expenses of
6 such an engineer.

7 (e) A landowner affected by the proposed condemnation
8 action may request a public hearing regarding the influence
9 of a federal agency on the lake creation or development
10 project, on the proposed condemnation actions related to the
11 project, and on the use of federal guidelines in analyzing
12 drinking water capacity needs. The hearing shall be conducted
13 by a person who is not involved with the lake creation or
14 development, and the services of such person in conducting the
15 hearing shall be paid by the acquiring agency.

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

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

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

26 3. For any action brought under this section, the burden
27 of proof shall be on the acquiring agency to prove by a
28 ~~preponderance of the~~ clear and convincing evidence that the
29 finding of public use, public purpose, or public improvement
30 meets the definition of those terms. If a property owner or a
31 contract purchaser of record or a tenant occupying the property
32 under a recorded lease prevails in an action brought under
33 this section, the acquiring agency shall be required to pay
34 the costs, including reasonable attorney fees, of the adverse
35 party.

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

3 **6B.2C Approval of the public improvement.**

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

13 Sec. 7. Section 6B.14, subsection 2, Code 2011, is amended
14 to read as follows:

15 2. Prior to the meeting of the commission, the commission
16 or a commissioner shall not communicate with the applicant,
17 property owner, or tenant, or their agents, regarding the
18 condemnation proceedings. The commissioners shall meet in open
19 session to view the property and to receive evidence, ~~but may~~
20 and shall deliberate and vote in closed open session. When
21 ~~deliberating in closed session, the meeting is closed to all~~
22 ~~persons who are not commissioners except for personnel from~~
23 ~~the sheriff's office if such personnel is requested by the~~
24 ~~commission.~~ After deliberations commence, the commission and
25 each commissioner is prohibited from communicating with any
26 party to the proceeding unless such communication occurs in the
27 presence of or with the consent of the property owner and other
28 parties who appeared before the commission or their agents.
29 ~~However, if the commission is deliberating in closed session,~~
30 ~~and after deliberations commence the commission requires~~
31 ~~further information from a party or a witness, the commission~~
32 ~~shall notify the property owner and the acquiring agency that~~
33 ~~they are allowed to attend the meeting at which such additional~~
34 ~~information shall be provided but only for that period of time~~
35 ~~during which the additional information is being provided.~~

~~1 The property owner and the acquiring agency shall be given a~~
~~2 reasonable opportunity to attend the meeting.~~ The commission
3 shall keep minutes of all its meetings showing the date, time,
4 and place, the members present, and the action taken at each
5 meeting. The minutes shall show the results of each vote taken
6 and information sufficient to indicate the vote of each member
7 present. ~~The vote of each member present shall be made public~~
~~8 at the open session.~~ The minutes shall be public records open
9 to public inspection.

10 Sec. 8. Section 6B.54, subsection 10, paragraph a, Code
11 2011, is amended by adding the following new subparagraph:

12 NEW SUBPARAGRAPH. (3) Reasonable attorney fees and
13 reasonable costs not to exceed one hundred thousand dollars,
14 including expert witness fees and fees relating to appraisal of
15 the property, not otherwise provided under section 6B.33.

16 Sec. 9. NEW SECTION. **68B.9 Ban on certain lobbying**
17 **activities on behalf of political subdivisions.**

18 A political subdivision that collects and expends property
19 taxes shall not use public funds of any kind to pay a person,
20 organization, or other entity to act as a lobbyist in relation
21 to any legislation relating specifically to eminent domain
22 authority or condemnation procedures.

23 Sec. 10. Section 316.4, subsection 1, Code 2011, is amended
24 to read as follows:

25 1. If a program or project undertaken by a displacing agency
26 will result in the displacement of a person, the displacing
27 agency shall make a payment to the displaced person, upon
28 proper application as approved by the displacing agency, for
29 actual reasonable and necessary expenses incurred in moving the
30 person, the person's family, business, farm operation, or other
31 personal property subject to rules and limits established by
32 the department. The payment may also provide for actual direct
33 losses of tangible personal property, purchase of substitute
34 personal property, business reestablishment expenses, storage
35 expenses, and expenses incurred in searching for a replacement

1 business or farm. If relocation of a business or farm
2 operation is not economically feasible, the displaced person
3 may also apply for payment of the loss of existing business
4 relationships because of the inability to relocate the business
5 or farm operation to a location similar in economic advantage
6 to the location from which the business or farm operation was
7 displaced.

8 Sec. 11. Section 364.4, subsection 1, paragraph a,
9 unnumbered paragraph 1, Code 2011, is amended to read as
10 follows:

11 Acquire, hold, and dispose of property outside the city in
12 the same manner as within. However, the power of a city to
13 acquire property outside the city does not include the power
14 to acquire property outside the city by eminent domain, except
15 if viable alternatives do not exist within the city and the
16 acquisition of the property is necessary for the following,
17 subject to the provisions of chapters 6A and 6B:

18 Sec. 12. Section 403.7, subsection 1, unnumbered paragraph
19 1, Code 2011, is amended to read as follows:

20 A municipality shall have the right to acquire by
21 condemnation any interest in real property, including a fee
22 simple title thereto, which it may deem necessary for or in
23 connection with an urban renewal project under this chapter,
24 subject to the limitations on eminent domain authority
25 in ~~chapter~~ chapters 6A and 6B. However, a municipality
26 shall not condemn agricultural land included within an
27 economic development area for any use unless the owner of
28 the agricultural land consents to condemnation or unless ~~the~~
29 ~~municipality determines that the land is necessary or useful~~
30 viable alternatives to the condemnation of agricultural land do
31 not exist and the acquisition of the property is necessary for
32 any of the following:

33 Sec. 13. Section 455A.5, Code 2011, is amended by adding the
34 following new subsection:

35 NEW SUBSECTION. 7. The authority granted to the commission

1 to acquire real property for purposes of carrying out a
2 duty related to development or maintenance of the recreation
3 resources of the state, including planning, acquisition, and
4 development of recreational projects, and areas and facilities
5 related to such projects, shall not include the authority to
6 acquire real property by eminent domain.

7 Sec. 14. Section 456A.24, subsection 2, unnumbered
8 paragraph 1, Code 2011, is amended to read as follows:

9 Acquire by purchase, ~~condemnation~~, lease, agreement,
10 gift, and devise lands or waters suitable for the purposes
11 hereinafter enumerated, and rights-of-way thereto, and to
12 maintain the same for the following purposes, ~~to wit~~:

13 Sec. 15. Section 456A.24, Code 2011, is amended by adding
14 the following new subsection:

15 NEW SUBSECTION. 15. The authority granted the department
16 to acquire real property for any statutory purpose relating to
17 the development or maintenance of the recreation resources of
18 the state, including planning, acquisition, and development
19 of recreational projects, and areas and facilities related to
20 such projects, shall not include the authority to acquire real
21 property by eminent domain.

22 Sec. 16. Section 461A.7, Code 2011, is amended to read as
23 follows:

24 **461A.7 ~~Eminent domain~~ Purchase of lands — public parks.**

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

29 Sec. 17. Section 461A.10, Code 2011, is amended to read as
30 follows:

31 **461A.10 Title to lands.**

32 The title to all lands purchased, ~~condemned~~, or donated,
33 hereunder, for park ~~or highway~~ purposes and the title to all
34 lands purchased, condemned, or donated hereunder for highway
35 purposes, shall be taken in the name of the state and if

1 thereafter it shall be deemed advisable to sell any portion of
2 the land so purchased or condemned, the proceeds of such sale
3 shall be placed to the credit of the said public state parks
4 fund to be used for such park purposes.

5 Sec. 18. Section 463C.8, subsection 1, paragraph k, Code
6 2011, is amended to read as follows:

7 *k.* The power to acquire, own, hold, administer, and dispose
8 of property, except that such power is not a grant of authority
9 to acquire property by eminent domain.

10 Sec. 19. REPEAL. Sections 461A.9 and 461A.75, Code 2011,
11 are repealed.

12 Sec. 20. EFFECTIVE UPON ENACTMENT AND APPLICABILITY. This
13 Act, being deemed of immediate importance, takes effect upon
14 enactment and applies to projects or condemnation proceedings
15 pending or commenced on or after that date.

16 EXPLANATION

17 This bill makes changes relating to eminent domain authority
18 and procedures.

19 The bill provides that proceedings for the acquisition of
20 property by eminent domain shall not be instituted by the state
21 without the signed authorization of the governor.

22 The bill changes the standard of proof from a preponderance
23 of the evidence to clear and convincing evidence for an action
24 brought in district court challenging the exercise of eminent
25 domain authority or contesting condemnation proceedings. The
26 bill adds reasonable attorney fees and reasonable costs, up to
27 \$100,000, to the list of expenses reimbursable by an acquiring
28 agency to a property owner.

29 The bill provides that property listed on the state register
30 of historic places shall not be removed from the register
31 solely for the purpose of allowing the property to be acquired
32 by condemnation.

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

1 that adequate funding for the public improvement has been
2 secured.

3 The bill prohibits a political subdivision that collects
4 and expends property taxes from using any public funds to
5 pay a person, organization, or other entity to lobby on any
6 legislation relating specifically to eminent domain authority
7 or condemnation procedures.

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

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

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

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

1 development urban renewal area to provide that condemnation may
2 occur if viable alternatives do not exist and the acquisition
3 of the land is necessary for the purposes stated in current
4 law.

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

14 The bill makes changes relating to eminent domain authority
15 in relation to development or creation of a lake. The bill
16 provides that, prior to making a determination that creation or
17 development of a lake is reasonable and necessary, an acquiring
18 agency must demonstrate by clear and convincing evidence that
19 no other prudent and feasible alternative for provision of a
20 drinking water source exists. The bill also amends provisions
21 relating to the guidelines or analyses to be used when
22 determining future drinking water capacity needs. The bill
23 provides that a landowner affected by the proposed condemnation
24 action may request a second review or analysis, and the
25 engineer shall be selected by a committee of private landowners
26 affected by the proposed condemnation action. The bill
27 further provides that the acquiring agency shall pay for the
28 services of such an engineer. The bill further provides that
29 an affected landowner may request a public hearing, conducted
30 by a neutral party, on the influence of a federal agency on the
31 lake project, on the proposed condemnation actions, and on the
32 use of federal guidelines in analyzing drinking water capacity
33 needs. The services of the person conducting the hearing shall
34 be paid by the acquiring agency.

35 The bill takes effect upon enactment and applies to projects

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1 or condemnation proceedings pending or commenced on or after
2 that date.