

House File 2411 - Introduced

HOUSE FILE 2411
BY COMMITTEE ON LOCAL
GOVERNMENT

(SUCCESSOR TO HF 289)

A BILL FOR

1 An Act relating to state and local government powers and
2 limitations, including authorizing loans from city reserve
3 funds and modifying eminent domain authority and procedures
4 and including effective date and retroactive and other
5 applicability provisions.
6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DIVISION I

LOANS FROM CITY RESERVE FUNDS

1
2
3 Section 1. Section 384.4, subsection 1, Code 2014, is
4 amended by adding the following new paragraph:

5 NEW PARAGRAPH. *f.* Payments of principal and interest on
6 loans entered into pursuant to section 384.24B and authorized
7 for repayment by the council from the debt service fund.

8 Sec. 2. NEW SECTION. **384.24B General obligation loans**
9 **funded by the city.**

10 1. A city may authorize a loan, as defined in this section,
11 to borrow money for any general corporate purpose or essential
12 corporate purpose in accordance with and subject to the
13 provisions of this section.

14 2. *a.* For purposes of this section, "*loan*" means the
15 sum of the transfers from the surplus of one or more reserve
16 accounts or funds of the city which transfers are authorized
17 for the purpose specified in the loan authorization document.
18 A transfer from a reserve account or fund for the purposes of
19 this section shall not cause the balance of reserves in such
20 account or fund at the close of the fiscal year following the
21 fiscal year in which the transfer is made to fall below any
22 minimum balance prescribed by law for such account or fund.
23 For the purposes of this section, "*reserve account or fund*"
24 means moneys held by a city that are not operating funds, as
25 defined in section 12B.10A, and which is authorized by law to
26 receive interest pursuant to section 12C.7.

27 *b.* A loan to finance a general obligation bond project
28 under this section shall not result in a user fee, rate, or
29 property tax increase to support the annual operations of the
30 account or fund from which the loan is made, as a result of
31 the unavailability of the surplus funds. For the purposes of
32 this section, "*surplus*" means the cash balance available in
33 any account or fund from which a loan will be made under this
34 section which exceeds the amount of expenses or disbursements
35 made from the account or fund in the previous three months,

1 plus the amount of transfers, payments, or disbursements
2 required in the following three months.

3 3. a. A loan entered into by a city pursuant to this
4 section may contain provisions similar to those found in loan
5 agreements between private parties, including but not limited
6 to the issuance of notes to evidence its obligations. The
7 terms of each loan shall require repayment of the loan within
8 ninety days to the extent necessary to prevent a user fee,
9 rate, or property tax increase which raises the user fees,
10 rates, or property taxes payable into the account or fund from
11 which the loan is made above the level in effect at the time a
12 loan under this section is authorized.

13 b. A loan authorized pursuant to this section shall
14 constitute an indebtedness within the meaning of any
15 constitutional debt limitation and shall be reported by the
16 city to the state treasurer in the same manner as required
17 for bonding activities pursuant to section 12.1. The full
18 or partial refunding of any loan under this section shall
19 be authorized as an essential corporate purpose pursuant to
20 section 384.24, subsection 3, paragraph "f".

21 4. A loan made pursuant to this section is payable from the
22 debt service fund of the city. The governing body shall follow
23 the same authorization procedures required for the issuance
24 of general obligation bonds issued for the same purpose to
25 authorize a loan made payable from the debt service fund.
26 Upon approval of a loan, the loan shall be accounted for in
27 accordance with section 384.20.

28 5. A loan made pursuant to this section shall include
29 provisions establishing an interest rate on the loan that shall
30 be set at a rate that is between the interest rate established
31 pursuant to section 12C.6, subsection 2, paragraph "a", and the
32 interest rate established pursuant to section 74A.6, subsection
33 2.

34 6. Repayments of principal and interest shall be paid to
35 the reserve fund or account from which all or a portion of the

1 funds were advanced for the loan in the proportion that the
2 amount of the advance from the fund or account bears to the
3 entire amount of the loan.

4 7. *a.* The limitation in section 346.24 does not apply to a
5 transfer made pursuant to this section or to a loan authorized
6 pursuant to this section.

7 *b.* A city shall not become indebted under this section to an
8 amount exceeding six million dollars.

9 8. A loan made pursuant to this section shall not include
10 any transfers or obligations from the reserve fund or account
11 of a city utility or of a combined city utility.

12 9. The powers granted under this section shall not be
13 construed as a limitation of the existing powers of a city.

14 Sec. 3. Section 384.25, Code 2014, is amended to read as
15 follows:

16 **384.25 General obligation bonds or loans for essential**
17 **purposes.**

18 1. A city which proposes to carry out any essential
19 corporate purpose within or without its corporate limits, and
20 to contract indebtedness and issue general obligation bonds or
21 authorize a loan described in section 384.24B, to provide funds
22 to pay all or any part of the cost of a project must do so in
23 accordance with the provisions of this division.

24 2. Before the council may institute proceedings for the
25 issuance of bonds or authorization of a loan for an essential
26 corporate purpose, a notice of the proposed action, including
27 a statement of the amount and purposes of the bonds or loan,
28 and the time and place of the meeting at which the council
29 proposes to take action for the issuance of the bonds or
30 authorization of the loan, must be published as provided in
31 section 362.3. At the meeting, the council shall receive oral
32 or written objections from any resident or property owner
33 of the city. After all objections have been received and
34 considered, the council may, at that meeting or any adjournment
35 thereof, take additional action for the issuance of the bonds

1 or authorization of the loan or abandon the proposal to issue
2 the bonds or authorize the loan. Any resident or property
3 owner of the city may appeal the decision of the council to
4 take additional action to the district court of the county in
5 which any part of the city is located, within fifteen days
6 after the additional action is taken, but the additional action
7 of the council is final and conclusive unless the court finds
8 that the council exceeded its authority. The provisions of
9 this subsection with respect to notice, hearing, and appeal,
10 are in lieu of the provisions contained in chapter 73A, or any
11 other law.

12 3. a. Notwithstanding subsection 2, a council may institute
13 proceedings for the issuance of bonds or the authorization of a
14 loan for an essential corporate purpose specified in section
15 384.24, subsection 3, paragraph "w" or "x", in an amount equal
16 to or greater than three million dollars by causing a notice
17 of the proposal to issue the bonds or authorize the loan,
18 including a statement of the amount and purpose of the bonds
19 or loan, together with the maximum rate of interest which the
20 bonds are to bear or which will be charged to the principal
21 balance of the loan, and the right to petition for an election,
22 to be published at least once in a newspaper of general
23 circulation within the city at least ten days prior to the
24 meeting at which it is proposed to take action for the issuance
25 of the bonds or the authorization of the loan.

26 b. If at any time before the date fixed for taking action
27 for the issuance of the bonds or the authorization of the
28 loan, a petition is filed with the clerk of the city signed
29 by eligible electors of the city equal in number to twenty
30 percent of the persons in the city who voted for the office of
31 president of the United States at the last preceding general
32 election that had such office on the ballot, asking that the
33 question of issuing the bonds or authorizing the loan be
34 submitted to the registered voters of the city, the council
35 shall either by resolution declare the proposal to issue the

1 bonds or authorize the loan to have been abandoned or shall
2 direct the county commissioner of elections to call a special
3 election upon the question of issuing the bonds or authorizing
4 the loan. Notice of the election and its conduct shall be in
5 the manner provided in section 384.26.

6 c. If a petition is not filed, or if a petition is filed and
7 the proposition of issuing the bonds or authorizing the loan
8 is approved at an election, the council may proceed with the
9 authorization and issuance of the bonds or authorization of the
10 loan.

11 Sec. 4. Section 384.26, subsections 1, 2, 4, and 5, Code
12 2014, are amended to read as follows:

13 1. A city which proposes to carry out any general corporate
14 purpose within or without its corporate limits, and to contract
15 indebtedness and issue general obligation bonds or authorize a
16 loan described in section 384.24B, to provide funds to pay all
17 or any part of the costs of a project, must do so in accordance
18 with the provisions of this division.

19 2. Before the council may institute proceedings for the
20 issuance of bonds or authorization of a loan for a general
21 corporate purpose, it shall call a special city election to
22 vote upon the question of issuing the bonds or authorizing the
23 loan. At the election the proposition must be submitted in one
24 of the following ~~form~~ forms, as applicable:

25 Shall the (insert the name of the city) issue
26 its bonds in an amount not exceeding the amount of \$.... for
27 the purpose of?

28 Shall the (insert the name of the city) authorize
29 a loan from its surplus funds in an amount not exceeding the
30 amount of \$.... for the purpose of?

31 4. The proposition of issuing general corporate purpose
32 bonds or authorizing a loan for a general corporate purpose
33 is not carried or adopted unless the vote in favor of the
34 proposition is equal to at least sixty percent of the total
35 vote cast for and against the proposition at the election.

1 If the proposition of issuing the general corporate purpose
2 bonds or authorizing a loan for a general corporate purpose is
3 approved by the voters, the city may proceed with the issuance
4 of the bonds or authorization of the loan.

5 5. a. Notwithstanding the provisions of subsection 2,
6 a council may, in lieu of calling an election, institute
7 proceedings for the issuance of bonds or authorization of a
8 loan for a general corporate purpose by causing a notice of the
9 proposal to issue the bonds or authorize the loan, including
10 a statement of the amount and purpose of the bonds or loan,
11 together with the maximum rate of interest which the bonds are
12 to bear or which the loan is to bear, and the right to petition
13 for an election, to be published at least once in a newspaper
14 of general circulation within the city at least ten days prior
15 to the meeting at which it is proposed to take action for the
16 issuance of the bonds or authorization of the loan subject to
17 the following limitations:

18 (1) In cities having a population of five thousand or less,
19 in an amount of not more than four hundred thousand dollars.

20 (2) In cities having a population of more than five thousand
21 and not more than seventy-five thousand, in an amount of not
22 more than seven hundred thousand dollars.

23 (3) In cities having a population in excess of seventy-five
24 thousand, in an amount of not more than one million dollars.

25 b. If at any time before the date fixed for taking action
26 for the issuance of the bonds or the authorization of the
27 loan, a petition is filed with the clerk of the city in the
28 manner provided by section 362.4, asking that the question
29 of issuing the bonds or authorizing the loan be submitted to
30 the registered voters of the city, the council shall either by
31 resolution declare the proposal to issue the bonds or authorize
32 the loan to have been abandoned or shall direct the county
33 commissioner of elections to call a special election upon the
34 question of issuing the bonds or authorizing the loan. Notice
35 of the election and its conduct shall be in the manner provided

1 in the preceding subsections of this section.

2 c. If no petition is filed, or if a petition is filed and
3 the proposition of issuing the bonds or authorizing the loan
4 is approved at an election, the council may proceed with the
5 authorization and issuance of the bonds or the authorization
6 of the loan.

7 Sec. 5. Section 384.33, Code 2014, is amended to read as
8 follows:

9 **384.33 Action.**

10 No action may be brought which questions the legality of
11 general obligation bonds, notes, or loans under this chapter or
12 the power of the city to issue the bonds, notes or loans or the
13 effectiveness of any proceedings relating to the authorization
14 and issuance of the bonds, notes, or loans from and after sixty
15 days from the time the bonds, notes or loans are ordered issued
16 by the city.

17 DIVISION II

18 EMINENT DOMAIN

19 Sec. 6. NEW SECTION. **6A.15 Property on state historic**
20 **registry.**

21 1. Property listed on the state register of historic places
22 maintained by the historical division of the department of
23 cultural affairs shall not be removed from the register solely
24 for the purpose of allowing acquisition of the property by
25 condemnation, unless such condemnation is undertaken by the
26 department of transportation.

27 2. 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 condemned by the state or a
30 political subdivision unless a joint resolution authorizing
31 commencement of the condemnation proceedings is approved by a
32 vote of at least two-thirds of the members of both chambers of
33 the general assembly and signed by the governor. The approval
34 requirements of this subsection shall not apply to condemnation
35 undertaken by the department of transportation.

1 Sec. 7. Section 6A.19, Code 2014, is amended to read as
2 follows:

3 **6A.19 Interpretative clause.**

4 A grant in this chapter of right to take private property
5 for a public use shall not be construed as limiting a like
6 grant elsewhere in the Code for another and different use.
7 Unless specifically provided by law, this chapter shall not
8 be construed to limit or otherwise affect the application of
9 chapters 478 and 479 to the eminent domain authority of the
10 utilities division of the department of commerce.

11 Sec. 8. Section 6A.22, subsection 2, paragraph c,
12 subparagraph (1), Code 2014, is amended to read as follows:

13 (1) (a) If private property is to be condemned for
14 development or creation of a lake, only that number of acres
15 justified as reasonable and necessary for a surface drinking
16 water source, and not otherwise acquired, may be condemned.
17 In addition, the acquiring agency shall conduct a review of
18 prudent and feasible alternatives to provision of a drinking
19 water source prior to making a determination that such
20 lake development or creation is reasonable and necessary.
21 Development or creation of a lake as a surface drinking water
22 source includes all of the following:

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

25 (ii) The water supply pool.

26 (iii) The sediment pool.

27 (iv) The flood control pool.

28 (v) The floodwater retarding pool.

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

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

33 (b) For purposes of this subparagraph (1), "*number of acres*
34 *justified as reasonable and necessary for a surface drinking*
35 *water source*" means according to guidelines of the United

1 States natural resource conservation service and according to
2 analyses of surface drinking water capacity needs conducted by
3 one or more registered professional engineers. The registered
4 professional engineers may, if appropriate, employ standards
5 or guidelines other than the guidelines of the United States
6 natural resource conservation service when determining the
7 number of acres justified as reasonable and necessary for
8 a surface drinking water source. The data and information
9 used by the registered professional engineers shall include
10 data and information relating to population and commercial
11 enterprise activity for the area from the two most recent
12 federal decennial censuses unless the district court of the
13 county in which the property is situated has determined by
14 a preponderance of the evidence that such data would not
15 accurately predict the population and commercial enterprise
16 activity of the area in the future.

17 (c) A second review or analysis of the drinking water
18 capacity needs shall be performed upon receipt by the acquiring
19 agency of a petition signed by not less than twenty-five
20 percent of the affected property owners. The registered
21 professional engineer to perform the second review or analysis
22 shall be selected by a committee appointed by the affected
23 property owners and whose membership is comprised of at
24 least fifty percent property owners affected by the proposed
25 condemnation action. The acquiring agency shall be responsible
26 for paying the fees and expenses of such an engineer.

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

32 Sec. 9. Section 6B.54, subsection 10, paragraph a, Code
33 2014, is amended by adding the following new subparagraph:

34 NEW SUBPARAGRAPH. (3) Reasonable attorney fees and
35 reasonable costs not to exceed one hundred thousand dollars,

1 attributable to a determination that the creation of a lake
2 through condemnation includes a future recreational use or that
3 a violation of section 6A.22, subsection 2, paragraph "c",
4 subparagraph (1), subparagraph division (d), has occurred, if
5 such fees and costs are not otherwise provided under section
6 6B.33.

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

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

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

35 3. The acquiring agency shall give written notice to the

1 owner of the right to purchase the property under this section
2 at the time damages are paid to the owner.

3 Sec. 11. Section 403.7, subsection 1, unnumbered paragraph
4 1, Code 2014, is amended to read as follows:

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

16 Sec. 12. NEW SECTION. 423B.11 Use of revenues —
17 limitation.

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

26 Sec. 13. Section 455A.5, Code 2014, is amended by adding the
27 following new subsection:

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

35 Sec. 14. Section 456A.24, subsection 2, unnumbered

1 paragraph 1, Code 2014, is amended to read as follows:

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

6 Sec. 15. Section 456A.24, Code 2014, is amended by adding
7 the following new subsection:

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

15 Sec. 16. Section 461A.7, Code 2014, is amended to read as
16 follows:

17 **461A.7 ~~Eminent domain~~ Purchase of lands — public parks.**

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

22 Sec. 17. Section 461A.10, Code 2014, is amended to read as
23 follows:

24 **461A.10 Title to lands.**

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

33 Sec. 18. Section 463C.8, subsection 1, paragraph k, Code
34 2014, is amended to read as follows:

35 *k.* The power to acquire, own, hold, administer, and dispose

1 of property, except that such power is not a grant of authority
2 to acquire property by eminent domain.

3 Sec. 19. REPEAL. Sections 461A.9 and 461A.75, Code 2014,
4 are repealed.

5 Sec. 20. SEVERABILITY. If any provision of this division of
6 this Act is held invalid, the invalidity shall not affect other
7 provisions or applications of this division of this Act which
8 can be given effect without the invalid provision, and to this
9 end the provisions of this division of this Act are severable
10 as provided in section 4.12.

11 Sec. 21. EFFECTIVE UPON ENACTMENT. This division of this
12 Act, being deemed of immediate importance, takes effect upon
13 enactment.

14 Sec. 22. APPLICABILITY. Except as otherwise provided in
15 this division of this Act, this division of this Act applies to
16 projects or condemnation proceedings pending or commenced on or
17 after the effective date of this division of this Act.

18 Sec. 23. RETROACTIVE APPLICABILITY. Notwithstanding any
19 provision of law to the contrary, the following provision or
20 provisions of this division of this Act apply retroactively to
21 projects or condemnation proceedings pending or commenced on or
22 after February 15, 2013:

23 1. The section of this division of this Act amending section
24 6A.22.

25 2. The section of this division of this Act enacting section
26 6B.56B.

27

EXPLANATION

28 The inclusion of this explanation does not constitute agreement with
29 the explanation's substance by the members of the general assembly.

30 This bill relates to state and local government powers and
31 limitations.

32 DIVISION I — LOANS FROM CITY RESERVE FUNDS. The bill enacts
33 new Code section 384.24B to allow a city to borrow surplus
34 money from its reserve accounts or funds for any general
35 corporate purpose or essential corporate purpose. The bill

1 requires that a city certify taxes to be levied for deposit in
2 the debt service fund in the amount necessary to pay principal
3 and interest on loans authorized under the bill. The bill
4 defines "loan", "surplus", and "reserve account or fund".

5 The bill requires that such loans not cause the balances
6 of such reserve accounts or funds to fall below any minimum
7 balance prescribed by law and requires that a city shall not
8 become indebted under such loans to an amount in excess of \$6
9 million. The bill requires that loans from reserve funds be
10 reported to the state treasurer in the same manner as required
11 for bonds issued by a city. The bill requires that such loans
12 not result in a user fee, rate, or property tax increase as
13 a result of unavailability of surplus funds. The terms of
14 each loan shall require repayment of the loan within 90 days
15 to the extent necessary to prevent a user fee rate or property
16 tax increase. Such a loan shall be payable from the city debt
17 service fund and shall constitute an indebtedness within the
18 meaning of any statutory debt limitation.

19 The full or partial repayment of a loan entered into under
20 the bill shall constitute an essential corporate purpose
21 pursuant to Code section 384.24, subsection 3, paragraph "f".
22 The bill provides that upon approval of such a loan that the
23 loan shall be accounted for as a separate account pursuant
24 to current Code section 384.20. The bill further provides
25 that interest rates on such a loan be set between the interest
26 rate established for the deposit of public funds, established
27 in current Code section 12C.6 and the maximum interest rate
28 established for public obligations and assessments under
29 current Code section 74A.6, subsection 2. The bill provides
30 that such a loan not include any transfers or obligations from
31 a reserve fund or account of a city utility or combined city
32 utility.

33 The bill requires that a city council follow substantially
34 the same procedures for the issuance of general obligation
35 bonds for essential corporate purposes, pursuant to Code

1 section 384.25, or for general corporate purposes, pursuant to
2 Code section 384.26 when making a loan from reserve funds.

3 The bill further provides that no action may be brought
4 against a city regarding the legality, power to issue, or power
5 to authorize notes or loans under Code chapter 384 at any time
6 after 60 days following issuance.

7 DIVISION II — EMINENT DOMAIN. The bill provides that
8 property listed on the state register of historic places shall
9 not be removed from the register solely for the purpose of
10 allowing the property to be acquired by condemnation unless the
11 condemnation is undertaken by the department of transportation.
12 The bill also provides that property on the state register of
13 historic places may not be condemned unless a joint resolution
14 authorizing the condemnation is approved by a vote of at least
15 two-thirds of each house of the general assembly and signed
16 by the governor. This approval procedure, however, does
17 not apply to a condemnation undertaken by the department of
18 transportation.

19 The bill specifies that Code chapter 6A, unless specifically
20 provided by law, is not to be construed to limit or otherwise
21 affect the application of Code chapters 478 and 479 to the
22 eminent domain authority of the utilities division of the
23 department of commerce.

24 The bill makes changes relating to eminent domain authority
25 in relation to development or creation of a lake. The bill
26 provides that when determining the number of acres justified as
27 reasonable and necessary for a surface drinking water source,
28 the registered professional engineers may, if appropriate,
29 employ standards or guidelines other than the guidelines of
30 the United States natural resource conservation service. The
31 bill requires the data and information used by the registered
32 professional engineers to include data and information relating
33 to population and commercial enterprise activity for the area
34 from the two most recent federal decennial censuses unless the
35 district court of the county in which the property is situated

1 has determined by a preponderance of the evidence that such
2 data would not accurately predict the population and commercial
3 enterprise activity of the area in the future.

4 The bill also provides that a second review or analysis
5 of the drinking water capacity needs shall be performed upon
6 receipt by the acquiring agency of a petition signed by not
7 less than 25 percent of the affected property owners. The
8 registered professional engineer to perform the second review
9 or analysis shall be selected by a committee appointed by the
10 affected property owners and comprised of at least 50 percent
11 property owners affected by the proposed condemnation action.
12 The division further provides that the acquiring agency shall
13 pay for the services of such an engineer.

14 The bill provides that if private property is to be condemned
15 for development or creation of a lake, the plans, analyses,
16 applications, including any application for funding, and other
17 planning activities of the acquiring agency shall not include
18 or provide for the use of the lake for recreational purposes.

19 The bill adds reasonable attorney fees and reasonable costs
20 that are attributable to certain condemnation proceedings
21 relating to the creation of a lake, up to \$100,000, to the list
22 of expenses reimbursable by an acquiring agency to a property
23 owner.

24 The bill provides that when two years have elapsed since
25 property was condemned for the creation of a lake and the
26 property has not been used for or construction has not
27 progressed substantially for the purpose stated in the
28 application, and the acquiring agency has not taken action to
29 dispose of the property pursuant to Code section 6B.56, the
30 acquiring agency shall, within 60 days, adopt a resolution
31 offering the property for sale to the prior owner at a price
32 as provided in Code section 6B.56. If the acquiring agency
33 has not adopted a resolution within the 60-day time period,
34 the prior owner may petition the acquiring agency to offer the
35 property for sale to the prior owner at a price as provided in

1 Code section 6B.56. The bill requires the acquiring agency to
2 give written notice to the owner at the time damages are paid
3 to the owner of the right to purchase the property under such
4 circumstances.

5 The bill also amends urban renewal law relating to the
6 circumstances in which a municipality may condemn agricultural
7 land within an economic development urban renewal area to
8 provide that condemnation may occur if viable alternatives do
9 not exist and the acquisition of the land is necessary for the
10 purposes stated in current law.

11 The bill provides that the revenue raised by a local sales
12 and services tax imposed under Code chapter 423B by a county
13 shall not be expended for any purpose related to a project
14 that includes the condemnation of private property for the
15 creation of a lake if the local sales and services tax has not
16 been approved at election in the area where the property to be
17 condemned is located.

18 The bill provides that the department of natural resources
19 and the natural resource commission shall not exercise eminent
20 domain authority to acquire real property for purposes of
21 carrying out a duty related to 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. The bill
25 retains the department's authority to acquire property through
26 condemnation for highway purposes.

27 Except as otherwise provided in division II of the bill,
28 division II takes effect upon enactment and applies to projects
29 or condemnation proceedings pending or commenced on or after
30 that date.

31 Division II of the bill provides that the provisions of
32 division II amending Code section 6A.22 and enacting Code
33 section 6B.56B apply retroactively to projects or condemnation
34 proceedings pending or commenced on or after February 15, 2013.