

House Study Bill 223 - Introduced

HOUSE FILE _____

BY (PROPOSED COMMITTEE ON
GOVERNMENT OVERSIGHT BILL
BY CHAIRPERSON KAUFMANN)

A BILL FOR

1 An Act relating to the use of eminent domain authority,
2 modifying and establishing related procedures, and including
3 effective date and applicability provisions.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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DIVISION I

CONDEMNATION FOR CREATION OF A LAKE — NUMBER OF ACRES

Section 1. Section 6A.22, subsection 2, paragraph c, subparagraph (1), subparagraph division (b), Code 2015, is amended to read as follows:

(b) (i) 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. However, the determination of surface drinking water capacity needs shall be limited to the needs of the population of the county where the lake is to be developed or created, according to the most recent federal decennial census.

(ii) For condemnation proceedings for which the application for condemnation pursuant to section 6B.3 was filed on or after July 1, 2012, and on or before January 1, 2015, “number of acres justified as necessary for a surface drinking water source”, as determined under subparagraph subdivision (i) shall not exceed the number of acres that would be necessary to provide the amount of drinking water consumed in the most recently completed calendar year prior to the date on which the application was filed in the county where the lake is to be developed or created.

Sec. 2. EFFECTIVE UPON ENACTMENT. This division of this Act, being deemed of immediate importance, takes effect upon enactment.

DIVISION II

CONDEMNATION FOR CREATION OF A LAKE — EXISTING SOURCES

Sec. 3. Section 6A.22, subsection 2, paragraph c, subparagraph (1), subparagraph division (a), unnumbered paragraph 1, Code 2015, is amended to read as follows:

If private property is to be condemned for development or creation of a lake, only that number of acres justified

1 as necessary for a surface drinking water source, and not
2 otherwise acquired, may be condemned. ~~In addition~~ However,
3 an acquiring agency shall not have the authority to condemn
4 private property for creation of a lake as a surface drinking
5 water source if an existing drinking water source may be
6 expanded or supplemented for such purpose, regardless of cost.
7 If an existing drinking water source is incapable of being
8 expanded or supplemented as a surface drinking water source,
9 the acquiring agency shall conduct a review of prudent and
10 feasible alternatives to provision of a drinking water source
11 prior to making a determination that such lake development or
12 creation is reasonable and necessary. Development or creation
13 of a lake as a surface drinking water source includes all of
14 the following:

15 Sec. 4. EFFECTIVE UPON ENACTMENT. This division of this
16 Act, being deemed of immediate importance, takes effect upon
17 enactment.

18 Sec. 5. APPLICABILITY. This division of this Act applies to
19 projects or condemnation proceedings pending or commenced on or
20 after the effective date of this division of this Act.

21 DIVISION III

22 DISPLACED PERSONS

23 Sec. 6. Section 6B.42, subsection 1, paragraph a, Code 2015,
24 is amended to read as follows:

25 a. The acquiring agency shall provide to the person,
26 in addition to any other sums of money in payment of just
27 compensation, the payments and assistance required by law, in
28 accordance with chapter 316, as if the acquiring agency were a
29 displacing agency under that chapter, regardless of whether the
30 acquiring agency is subject to the federal Uniform Relocation
31 Act and regardless of whether the acquiring agency has received
32 or will receive federal financial assistance, as defined in
33 section 316.1.

34 Sec. 7. Section 6B.42, subsection 2, paragraph a, Code 2015,
35 is amended to read as follows:

1 for which the property will be used or offering the property
2 for sale to the prior owner at a price as provided in section
3 6B.56. If the resolution adopted approves an offer of sale to
4 the prior owner, the offer shall be made in writing and mailed
5 by certified mail to the prior owner. The prior owner has one
6 hundred eighty days after the offer is mailed to purchase the
7 property from the acquiring agency.

8 Sec. 12. Section 6B.56A, subsection 4, Code 2015, is amended
9 to read as follows:

10 4. This section does not apply to property acquired for
11 street and highway projects undertaken by the state, a county,
12 or a city or to property that is subject to the disposition of
13 property requirements under section 6B.56B.

14 Sec. 13. NEW SECTION. **6B.56B** **Disposition of condemned**
15 **property — lake creation.**

16 1. If property was condemned according to the requirements
17 of section 6A.22, subsection 2, paragraph "c", subparagraph
18 (1), for the creation of a lake, and the acquiring agency seeks
19 to dispose of all or a portion of such property, regardless of
20 whether the property has been used for the purpose stated in
21 the application filed pursuant to section 6B.3, the acquiring
22 agency shall first offer such property for sale to the prior
23 owner of the condemned property as provided in this section.
24 For purposes of this section, the prior owner of the real
25 property includes the successor in interest of the real
26 property.

27 2. a. Before the real property described in subsection 1
28 may be offered for sale to the general public, the acquiring
29 agency shall notify the prior owner of such real property in
30 writing of the acquiring agency's intent to dispose of the real
31 property, of the current appraised value of the real property
32 to be offered for sale, and of the prior owner's right to
33 purchase the real property to be offered for sale within sixty
34 days from the date the notice is served at a price equal to the
35 current appraised value of the real property to be offered for

1 sale or the fair market value of the property to be offered for
2 sale at the time it was acquired by the acquiring agency from
3 the prior owner plus cleanup costs incurred by the acquiring
4 agency, whichever is less. However, the current appraised
5 value of the real property to be offered for sale shall be the
6 purchase price to be paid by the previous owner if any other
7 amount would result in a loss of federal funding for projects
8 funded in whole or in part with federal funds. The notice sent
9 by the acquiring agency as provided in this subsection shall
10 be filed with the office of the recorder in the county in which
11 the real property is located.

12 **b.** For purposes of this subsection, "*cleanup costs*" means
13 costs incurred to abate a nuisance or a public nuisance as
14 those terms are defined in chapters 657 and 657A and costs
15 incurred to recycle and remediate land pursuant to chapter
16 455H.

17 **3.** If the prior owner elects to purchase the real property
18 at the price established in subsection 2, before the expiration
19 of the sixty-day period, the prior owner shall notify the
20 acquiring agency in writing of this intention and file a copy
21 of this notice with the office of the recorder in the county in
22 which the real property is located.

23 **Sec. 14. EFFECTIVE UPON ENACTMENT.** This division of this
24 Act, being deemed of immediate importance, takes effect upon
25 enactment.

26 **Sec. 15. APPLICABILITY.** This division of this Act applies
27 to projects or condemnation proceedings pending or commenced on
28 or after the effective date of this division of this Act.

29

EXPLANATION

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

32 This bill relates to the use of eminent domain authority and
33 modifying and establishing related procedures.

34 Division I of the bill amends provisions of Code section
35 6A.22, relating to the use of condemnation for creation of

1 a lake for drinking water needs. The bill provides that
2 for purposes of determining the number of acres justified
3 as necessary for a surface drinking water source, the
4 determination of surface drinking water capacity needs shall
5 be limited to the needs of the population of the county where
6 the lake is to be developed or created, according to the most
7 recent federal decennial census. The bill also provides
8 that for condemnation proceedings for which the application
9 for condemnation was filed on or after July 1, 2012, and on
10 or before January 1, 2015, the number of acres justified
11 as necessary for a surface drinking water source shall not
12 exceed the number of acres that would be necessary to provide
13 the amount of drinking water consumed in the most recently
14 completed calendar year prior to filing the application, in the
15 county where the lake is to be developed or created.

16 Division I of the bill takes effect upon enactment.

17 Current Code section 6A.22(2)(c)(1) authorizes the use of
18 eminent domain for development or creation of a lake and limits
19 that authority based on the need for surface drinking water.
20 Division II of the bill prohibits an acquiring agency from
21 condemning private property for creation of a lake as a surface
22 drinking water source if an existing drinking water source may
23 be expanded or supplemented for such purpose, regardless of
24 cost.

25 Division II of the bill takes effect upon enactment and
26 applies to projects or condemnation proceedings pending or
27 commenced on or after the effective date of the division.

28 Current Code section 6B.42 requires an acquiring agency and
29 certain utilities and railroads to provide to the condemnee,
30 in addition to any other sums of money in payment of just
31 compensation, the payments and assistance required by law,
32 in accordance with Code chapter 316, as if the acquiring
33 agency were a displacing agency under that Code chapter.
34 Code chapter 316 provides for certain relocation assistance
35 and relocation payments for displaced persons resulting from

1 federally assisted programs or projects. Division III of the
2 bill amends Code section 6B.42 to provide that the relocation
3 assistance and relocation payments for displaced persons must
4 be provided by an acquiring agency, utility, or railroad,
5 regardless of whether such entity is subject to the federal
6 Uniform Relocation Act and regardless of whether the entity is
7 receiving federal financial assistance.

8 Division III of the bill takes effect upon enactment and
9 applies to projects or condemnation proceedings pending or
10 commenced on or after the effective date of division III of the
11 bill.

12 Division IV of the bill enacts new Code section 6B.56B, which
13 provides that if property was condemned for the creation of
14 a lake and the acquiring agency seeks to dispose of all or a
15 portion of such property, regardless of whether the property
16 has been used for the purpose stated in the condemnation
17 application, the acquiring agency shall first offer such
18 property for sale to the prior owner of the condemned property.
19 The bill specifies that notice that must be provided to the
20 prior owner before such property may be offered for sale to the
21 general public. The bill also specifies the price at which the
22 prior owner may purchase such property and the procedures to be
23 followed if the prior owner elects to purchase the property.

24 Division IV also specifies that current Code sections 6B.56
25 and 6B.56A, relating to the disposition of condemned property,
26 do not apply to property condemned under Code section 6A.22 for
27 the creation of a lake.

28 Current Code section 6B.56A provides that when five years
29 have elapsed since property was condemned and the property
30 has not been used for the purpose stated in the application
31 and the acquiring agency has not taken action to dispose of
32 the property pursuant to Code section 6B.56, the acquiring
33 agency shall, within 60 days, adopt a resolution reaffirming
34 the purpose for which the property will be used or offering
35 the property for sale to the prior owner. The bill changes

1 the period of time for such disposition from five years to two
2 years.

3 Division IV of the bill takes effect upon enactment and
4 applies to projects or condemnation proceedings pending or
5 commenced on or after the effective date of division IV of the
6 bill.