

House File 603 - Introduced

HOUSE FILE 603
BY COMMITTEE ON GOVERNMENT
OVERSIGHT

(SUCCESSOR TO HSB 184)

A BILL FOR

1 An Act relating to eminent domain and condemnation, including
2 the authority of acquiring agencies to use eminent domain,
3 the procedures required for the use of eminent domain, and
4 compensation paid to certain property owners and including
5 effective date and applicability provisions.
6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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DIVISION I
MERCHANT LINES

Section 1. Section 6A.21, subsection 1, Code 2017, is amended by adding the following new paragraph:

NEW PARAGRAPH. *Ob.* "Merchant line" means the same as defined in section 478.6A, subsection 1.

Sec. 2. Section 6A.21, subsection 1, paragraph b, Code 2017, is amended to read as follows:

b. "Private development purposes" means the construction of, or improvement related to, recreational trails, recreational development paid for primarily with private funds, merchant lines, housing and residential development, or commercial or industrial enterprise development.

Sec. 3. Section 6A.21, subsection 2, Code 2017, is amended to read as follows:

2. The limitation on the definition of public use, public purpose, or public improvement does not apply to the establishment, relocation, or improvement of a road pursuant to [chapter 306](#), or to the establishment of a railway under the supervision of the department of transportation as provided in section 327C.2, or to an airport as defined in [section 328.1](#), or to land acquired in order to replace or mitigate land used in a road project when federal law requires replacement or mitigation. This limitation also does not apply to utilities, persons, companies, or corporations under the jurisdiction of the Iowa utilities board in the department of commerce or to any other utility conferred the right by statute to condemn private property or to otherwise exercise the power of eminent domain, except to the extent such purpose includes construction of merchant lines.

Sec. 4. Section 6A.22, subsection 2, paragraph a, subparagraph (2), Code 2017, is amended to read as follows:

(2) The acquisition of any interest in property necessary to the function of a public or private utility to the extent such purpose does not include construction of merchant lines, common

1 carrier, or airport or airport system.

2 Sec. 5. EFFECTIVE UPON ENACTMENT. This division of this
3 Act, being deemed of immediate importance, takes effect upon
4 enactment.

5 Sec. 6. APPLICABILITY. This division of this Act applies to
6 projects or condemnation proceedings commenced on or after the
7 effective date of this division of this Act.

8 DIVISION II

9 LAKE DEVELOPMENT OR CREATION

10 Sec. 7. Section 6A.22, subsection 2, paragraph c,
11 subparagraph (1), subparagraph divisions (b) and (c), Code
12 2017, are amended to read as follows:

13 (b) For condemnation of property located in a county with
14 a population of greater than nine thousand two hundred fifty
15 but less than nine thousand three hundred, according to the
16 2010 federal decennial census, prior to making a determination
17 that development or creation of a lake as a surface drinking
18 water source is reasonable and necessary, the acquiring
19 agency shall conduct a review of feasible alternatives to
20 development or creation of a lake as a surface drinking water
21 source. An acquiring agency shall not have the authority
22 to condemn private property for the development or creation
23 of a lake as a surface drinking water source if one or more
24 feasible alternatives to provision of a drinking water source
25 exist. An alternative that results in the physical expansion
26 of an existing drinking water source is presumed to be a
27 feasible alternative to development or creation of a lake as a
28 surface drinking water source. An alternative that supplies
29 drinking water by pipeline or other method of transportation or
30 transmission from an existing source located within or outside
31 this state at a reasonable cost is a feasible alternative
32 to development or creation of a lake as a surface drinking
33 water source. If private property is to be condemned for
34 development or creation of a lake, only that number of acres
35 justified as necessary for a surface drinking water source,

1 and not otherwise acquired, may be condemned. Upon receipt
2 by the acquiring agency of a petition signed by not less
3 than twenty-five percent of the affected property owners,
4 the acquiring agency shall retain a certified hydrologist to
5 conduct a review and analysis of the proposed development
6 or creation of a lake. The certified hydrologist shall be
7 selected by a majority of a committee comprised of all affected
8 property owners and a representative of the acquiring agency.
9 The acquiring agency shall be responsible for paying the fees
10 and expenses of the certified hydrologist. For purposes of
11 this subparagraph (1), "certified hydrologist" means a person
12 certified by the American institute of hydrology. Development
13 or creation of a lake as a surface drinking water source
14 includes all of the following:

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

17 (ii) The water supply pool.

18 (iii) The sediment pool.

19 (iv) The flood control pool.

20 (v) The floodwater retarding pool.

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

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

25 (0c) An acquiring agency shall not have the authority to
26 condemn private property for the development or creation of
27 a lake as a surface drinking water source unless the United
28 States army corps of engineers has performed an engineering
29 review of the project and approved all required permits and
30 authorizations for completion of the project.

31 (c) (i) For purposes of this subparagraph (1), "*number of*
32 *acres justified as necessary for a surface drinking water source*"
33 means according to guidelines of the United States natural
34 resource conservation service and according to analyses of
35 surface drinking water capacity needs conducted by one or more

1 ~~registered~~ licensed professional engineers.

2 (ii) For condemnation proceedings for which the application
3 pursuant to [section 6B.3](#) was filed after January 1, 2013, for
4 condemnation of property located in a county with a population
5 of greater than nine thousand two hundred fifty but less than
6 nine thousand three hundred, according to the 2010 federal
7 decennial census, which property sought to be condemned was in
8 whole or in part described in a petition filed under section
9 6A.24, subsection 2, after January 1, 2013, but before January
10 1, 2014, regardless of whether the petitioner was determined by
11 a court to not be a proper acquiring agency, "*number of acres*
12 *justified as necessary for a surface drinking water source*",
13 as determined under subparagraph subdivision (i) shall not
14 exceed the number of acres that would be necessary to provide
15 the amount of drinking water to meet the needs of a population
16 equal to the population of the county where the lake is to be
17 developed or created, according to the most recent federal
18 decennial census.

19 (iii) Upon receipt by the acquiring agency of a petition
20 signed by not less than twenty-five percent of the affected
21 property owners, the acquiring agency shall retain a
22 licensed professional engineer to conduct an additional
23 independent review and analysis of the determinations made
24 under subparagraph subdivisions (i) and (ii). The licensed
25 professional engineer shall be selected by a majority of a
26 committee comprised of all affected property owners and a
27 representative of the acquiring agency. The acquiring agency
28 shall be responsible for paying the fees and expenses of the
29 licensed professional engineer.

30 Sec. 8. EFFECTIVE UPON ENACTMENT. This division of this
31 Act, being deemed of immediate importance, takes effect upon
32 enactment.

33 Sec. 9. APPLICABILITY. This division of this Act applies to
34 projects or condemnation proceedings pending or commenced on or
35 after the effective date of this division of this Act.

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DIVISION III

PIPELINES

Sec. 10. NEW SECTION. **479B.9A Additional requirements — eminent domain.**

In addition to any other requirements for the granting of a petition pursuant to this chapter, an application for a permit to construct a pipeline involving the taking of property under eminent domain shall not be granted until the applicant has obtained through voluntary easements a minimum of seventy-five percent of the parcels needed for the construction, operation, and maintenance of the pipeline and stations or equipment for the proper operation of the pipeline. If seventy-five percent of the parcels needed has not been obtained through voluntary easements within two years following the date the application is filed with the board, the board shall reject the application and make a record of the rejection.

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

Sec. 12. **APPLICABILITY.** This division of this Act applies to applications for permits filed but not yet acted upon on the effective date of this division of this Act and to applications for permits filed on or after the effective date of this division of this Act.

DIVISION IV

RELOCATION OF BUSINESSES AND FARM OPERATIONS

Sec. 13. Section 6B.26, subsection 1, Code 2017, is amended to read as follows:

1. A landowner shall not be dispossessed under condemnation proceedings of the landowner's residence, dwelling house, outbuildings if the residence or dwelling house is also acquired, business, farm operation, orchard, or garden, until the damages thereto have been finally determined and paid. However, if the property described in **this subsection** is condemned for highway purposes by the state department of

1 transportation, the condemning authority may take possession
2 of the property either after the damages have been finally
3 determined and paid or one hundred eighty days after the
4 compensation commission has determined and filed its award, in
5 which event all of the appraisement of damages shall be paid
6 to the property owner before the dispossession can take place.
7 This subsection shall not apply to condemnation proceedings
8 for drainage or levee improvements, or for public school
9 purposes. For the purposes of **this subsection**, "outbuildings"
10 means structures and improvements located in proximity to the
11 landowner's residence.

12 **Sec. 14. NEW SECTION. 316.6A Replacement property payment**
13 **to certain businesses and farm operations.**

14 1. In addition to payments otherwise authorized by this
15 chapter, the displacing agency shall make a payment to a
16 displaced person who is displaced from the person's place of
17 business or farm operation if the displaced person owned the
18 real property on which the business was conducted or where the
19 farm operation was located for at least one year prior to the
20 date of initiation of negotiations for the acquisition of the
21 real property and if the displaced person purchases comparable
22 replacement real property to conduct the displaced person's
23 business or farm operation within eighteen months following the
24 date the displaced person vacates the real property or receives
25 payment from the displacing agency under another provision of
26 this chapter, whichever is later. The additional payment shall
27 include the following amounts:

28 *a.* An amount that when added to the acquisition cost of
29 the real property acquired by the displacing agency, excluding
30 any dwelling on the property, equals the reasonable cost of
31 comparable real property for the displaced person's business or
32 farm operation, as determined by the displacing agency.

33 *b.* An amount that compensates the displaced person for
34 any increased interest costs and other debt service costs
35 that the displaced person is required to pay for financing

1 the acquisition of comparable replacement real property. The
2 amount shall be paid only if the real property acquired by
3 the displacing agency was encumbered by a bona fide mortgage
4 or land contract creating a valid lien on the real property,
5 excluding the dwelling, or on the dwelling, for not less than
6 one year immediately prior to the initiation of negotiations
7 for the acquisition of the real property.

8 *c.* The amount of actual, reasonable, and necessary expenses
9 incurred by the displaced person for evidence of title,
10 recording fees, and other costs incident to the purchase of
11 comparable replacement real property, but not including prepaid
12 expenses.

13 2. In addition to payments otherwise authorized by this
14 chapter, the displacing agency shall make a payment to a
15 displaced person or a person who is displaced from the person's
16 place of business or farm operation as an indirect result of
17 the acquisition of real property by the displacing agency
18 if the person in whole or in part owns the business or farm
19 operation, the person leased the real property upon which the
20 business was conducted or where the farm operation was located
21 for at least one year prior to the date of initiation of
22 negotiations for the acquisition of the real property, and the
23 person leases or purchases comparable replacement real property
24 to conduct the displaced person's business or farm operation
25 within eighteen months of the date the person vacates the
26 real property or receives payment from the displacing agency
27 under another provision of this chapter, whichever is later.
28 The displacing agency shall determine whether a displacement
29 described in this subsection has occurred. The additional
30 payment shall include the following amounts:

31 *a.* If the person leases comparable real property, the
32 difference between the average monthly amount of the lease of
33 the comparable real property and the average monthly amount
34 of the lease for the real property acquired by the displacing
35 agency, multiplied by forty-two.

1 merchant lines.

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

6 Division II of the bill provides that for condemnation
7 of property located in a county with a population of greater
8 than 9,250 but less than 9,300, according to the 2010 federal
9 decennial census, an acquiring agency shall not have the
10 authority to condemn private property for the development or
11 creation of a lake as a surface drinking water source unless
12 the United States army corps of engineers has performed an
13 engineering review of the project and approved all required
14 permits and authorizations for completion of the project. The
15 bill also requires, at the expense of the acquiring agency, a
16 review and analysis of the proposed development or creation of
17 a lake by a certified hydrologist upon receipt by the acquiring
18 agency of a petition signed by not less than 25 percent of
19 the affected property owners. The certified hydrologist is
20 selected by a committee comprised of all affected property
21 owners and a representative of the acquiring agency.

22 In addition to the analysis of surface drinking water
23 capacity and the determination of the number of acres justified
24 as necessary for a surface drinking water source by one
25 or more licensed professional engineers, the bill provides
26 that an additional independent review and analysis of such
27 determinations shall be conducted, at the expense of the
28 acquiring agency, by a licensed professional engineer upon
29 receipt by the acquiring agency of a petition signed by not
30 less than 25 percent of the affected property owners. The
31 licensed professional engineer is selected by a committee
32 comprised of all affected property owners and a representative
33 of the acquiring agency.

34 Division II of the bill takes effect upon enactment and
35 applies to projects or condemnation proceedings pending or

1 commenced on or after the effective date of division II of the
2 bill.

3 Current Code chapter 479B allows the Iowa utilities
4 board to grant permits for the construction of hazardous
5 liquid pipelines and grant eminent domain rights to pipeline
6 companies to construct such pipelines. Division III of the
7 bill establishes new Code section 479B.9A to require that
8 in addition to any other requirements for granting a permit
9 pursuant to Code chapter 479B, an application for a permit
10 involving the taking of property under eminent domain will not
11 be granted until the applicant obtains at least 75 percent of
12 the parcels needed for the project through voluntary easements.
13 If 75 percent of the parcels needed has not been obtained
14 through voluntary easements within two years of filing the
15 application, the board must reject the application.

16 Division III of the bill takes effect upon enactment and is
17 applicable to applications for permits filed but not yet acted
18 upon on the effective date of division III of the bill and to
19 applications for permits filed on or after the effective date
20 of division III of the bill.

21 Division IV of the bill relates to the acquisition of real
22 property by governmental entities by modifying criteria for
23 dispossessing owners of property and authorizing payments
24 to certain displaced persons operating a business or a farm
25 operation.

26 The bill amends Code section 6B.26 by adding business and
27 farm operation to the list of types of property from which
28 a landowner shall not be dispossessed under condemnation
29 proceedings until the damages for the property have been
30 finally determined and paid.

31 The bill provides that, in addition to payments otherwise
32 authorized by Code chapter 316, a displacing agency shall make
33 a payment to a person who is displaced from the person's place
34 of business or farm operation if the displaced person owned the
35 real property on which the business was conducted or where the

1 farm operation was located for at least one year prior to the
2 date of initiation of negotiations for the acquisition of the
3 real property and if the displaced person purchases comparable
4 replacement real property to conduct the displaced person's
5 business or farm operation within 18 months following the date
6 the displaced person vacates the real property or receives
7 payment from the displacing agency under another provision of
8 Code chapter 316, whichever is later. The bill establishes the
9 methodology for determining the amount of the payment based on
10 certain specified costs incurred by the displaced person in
11 acquiring comparable real property.

12 The bill also provides for payments to a displaced person or
13 a person who is displaced from the person's place of business
14 or farm operation as an indirect result of the acquisition
15 of real property by the displacing agency if the person in
16 whole or in part owns the business or farm operation, the
17 person leased the real property upon which the business was
18 conducted or where the farm operation was located for at least
19 one year prior to the date of initiation of negotiations for
20 the acquisition of the real property, and the person leases or
21 purchases comparable replacement real property to conduct the
22 displaced person's business or farm operation within 18 months
23 of the date the person vacates the real property or receives
24 payment from the displacing agency under another provision
25 of Code chapter 316, whichever is later. Under the bill,
26 the displacing agency determines whether such a displacement
27 from leased property has occurred pursuant to rules adopted by
28 the department of transportation. The bill establishes the
29 methodology for determining the amount of the payment based on
30 certain specified costs incurred by the person in acquiring or
31 leasing comparable real property.

32 Division IV takes effect upon enactment and applies to
33 projects or condemnation proceedings pending or commenced on or
34 after the effective date of division IV of the bill.