

House File 603 - Reprinted

HOUSE FILE 603
BY COMMITTEE ON GOVERNMENT
OVERSIGHT

(SUCCESSOR TO HSB 184)

(As Amended and Passed by the House March 28, 2017)

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:

DIVISION I

MERCHANT LINES

1
2
3 Section 1. Section 6A.21, subsection 1, Code 2017, is
4 amended by adding the following new paragraph:

5 NEW PARAGRAPH. *0a.* "Aboveground merchant line" means
6 "merchant line" as defined in section 478.6A, subsection 1,
7 excluding those merchant lines that are underground.

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

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

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

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

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

34 (2) The acquisition of any interest in property necessary to
35 the function of a public or private utility to the extent such

1 purpose does not include construction of aboveground merchant
2 lines, common carrier, or airport or airport system.

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

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

9 DIVISION II

10 LAKE DEVELOPMENT OR CREATION

11 Sec. 7. Section 6A.22, subsection 2, paragraph c,
12 subparagraph (1), subparagraph division (c), subparagraph
13 subdivision (i), Code 2017, is amended to read as follows:

14 (i) For purposes of this subparagraph (1), "*number of acres*
15 *justified as necessary for a surface drinking water source*"
16 means according to guidelines of the United States natural
17 resource conservation service and according to analyses of
18 surface drinking water capacity needs conducted by one or more
19 ~~registered~~ licensed professional engineers.

20 Sec. 8. Section 6A.22, subsection 2, paragraph c,
21 subparagraph (1), Code 2017, is amended by adding the following
22 new subparagraph division:

23 NEW SUBPARAGRAPH DIVISION. (d) For condemnation
24 proceedings for which the application pursuant to section
25 6B.3 was filed after January 1, 2013, for condemnation of
26 property located in a county with a population of greater
27 than nine thousand two hundred fifty but less than nine
28 thousand three hundred, according to the 2010 federal decennial
29 census, which property sought to be condemned was in whole or
30 in part described in a petition filed under section 6A.24,
31 subsection 2, after January 1, 2013, but before January 1,
32 2014, regardless of whether the petitioner was determined by a
33 court to not be a proper acquiring agency, the acquiring agency
34 shall not have the authority to condemn private property for
35 the development or creation of a lake as a surface drinking

1 water source unless all of the following have been satisfied:

2 (i) Upon receipt by the acquiring agency of a petition,
3 signed by not less than twenty-five percent of the affected
4 property owners, the acquiring agency shall retain a certified
5 hydrologist to conduct a review and analysis of the proposed
6 development or creation of a lake. However, to be valid the
7 petition must be filed not later than ninety days following
8 the effective date of this division of this Act or ninety
9 days after the filing date of the application under section
10 6B.3, whichever is later. The certified hydrologist shall be
11 selected by a majority of a committee comprised of all affected
12 property owners and a representative of the acquiring agency.
13 The acquiring agency shall be responsible for paying the fees
14 and expenses of the certified hydrologist. For purposes of
15 this subparagraph (1), "*certified hydrologist*" means a person
16 certified by the American institute of hydrology. If a valid
17 petition is not filed within the prescribed ninety-day period,
18 the requirements of this subparagraph subdivision (i) shall be
19 deemed satisfied.

20 (ii) Upon receipt by the acquiring agency of a petition
21 signed by not less than twenty-five percent of the affected
22 property owners, the acquiring agency shall retain a licensed
23 professional engineer to conduct an additional independent
24 review and analysis of the determinations made under
25 subparagraph division (c), subparagraph subdivisions (i) and
26 (ii). However, to be valid the petition must be filed not
27 later than ninety days following the effective date of this
28 division of this Act or ninety days after the filing date of
29 the application under section 6B.3, whichever is later. The
30 licensed professional engineer shall be selected by a majority
31 of a committee comprised of all affected property owners and
32 a representative of the acquiring agency. The acquiring
33 agency shall be responsible for paying the fees and expenses
34 of the licensed professional engineer. If a valid petition
35 is not filed within the prescribed ninety-day period, the

1 requirements of this subparagraph subdivision (ii) shall be
2 deemed satisfied.

3 (iii) The United States army corps of engineers has
4 performed an engineering review of the project and approved
5 all required permits and authorizations for completion of the
6 project.

7 (iv) The acquiring agency has acquired at least eighty
8 percent of the land area comprising the proposed water supply
9 pool through voluntary acquisitions or voluntary negotiation
10 and purchases.

11 Sec. 9. EFFECTIVE UPON ENACTMENT. This division of this
12 Act, being deemed of immediate importance, takes effect upon
13 enactment.

14 Sec. 10. APPLICABILITY. This division of this Act applies
15 to projects or condemnation proceedings pending or commenced on
16 or after the effective date of this division of this Act.

17 DIVISION III

18 RELOCATION OF BUSINESSES AND FARM OPERATIONS

19 Sec. 11. Section 6B.26, subsection 1, Code 2017, is amended
20 to read as follows:

21 1. A landowner shall not be dispossessed under condemnation
22 proceedings of the landowner's residence, dwelling house,
23 outbuildings if the residence or dwelling house is also
24 acquired, business, farm operation, orchard, or garden,
25 until the damages thereto have been finally determined and
26 paid. However, if the property described in [this subsection](#)
27 is condemned for highway purposes by the state department of
28 transportation, the condemning authority may take possession
29 of the property either after the damages have been finally
30 determined and paid or one hundred eighty days after the
31 compensation commission has determined and filed its award, in
32 which event all of the appraisal of damages shall be paid
33 to the property owner before the dispossession can take place.
34 This subsection shall not apply to condemnation proceedings
35 for drainage or levee improvements, or for public school

1 purposes. For the purposes of **this subsection**, "outbuildings"
2 means structures and improvements located in proximity to the
3 landowner's residence.

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

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

20 a. An amount that when added to the acquisition cost of
21 the real property acquired by the displacing agency, excluding
22 any dwelling on the property, equals the reasonable cost of
23 comparable real property for the displaced person's business
24 or farm operation, as determined by an appraiser selected by
25 the displacing agency. In the absence of available replacement
26 real property, the amount of the payment under this paragraph
27 shall be the difference between the acquisition cost of the
28 real property acquired by the displacing agency and the sum
29 of the estimated cost of comparable land and the estimated
30 cost of constructing comparable improvements on the land
31 necessary for the displaced person to conduct the person's
32 business or farm operation. If the displaced person disagrees
33 with the amount determined by the appraiser selected by the
34 displacing agency, the displaced person may, at the expense
35 of the displacing agency, select an independent appraiser to

1 determine the amounts required under this paragraph. If the
2 amount determined by the appraiser selected by the displaced
3 person and the amount determined by the appraiser selected by
4 the displacing agency are not equal and the displacing agency
5 and the displaced person cannot agree on an appropriate amount,
6 the amount under this paragraph shall be the average of such
7 amounts determined by the appraisers.

8 *b.* An amount that compensates the displaced person for
9 any increased interest costs and other debt service costs
10 that the displaced person is required to pay for financing
11 the acquisition of comparable replacement real property. The
12 amount shall be paid only if the real property acquired by
13 the displacing agency was encumbered by a bona fide mortgage
14 or land contract creating a valid lien on the real property,
15 excluding the dwelling, or on the dwelling, for not less than
16 one year immediately prior to the initiation of negotiations
17 for the acquisition of the real property.

18 *c.* The amount of actual, reasonable, and necessary expenses
19 incurred by the displaced person for evidence of title,
20 recording fees, and other costs incident to the purchase of
21 comparable replacement real property, but not including prepaid
22 expenses.

23 2. In addition to payments otherwise authorized by this
24 chapter, the displacing agency shall make a payment to a
25 displaced person or a person who is displaced from the person's
26 place of business or farm operation as an indirect result of
27 the acquisition of real property by the displacing agency
28 if the person in whole or in part owns the business or farm
29 operation, the person leased the real property upon which the
30 business was conducted or where the farm operation was located
31 for at least one year prior to the date of initiation of
32 negotiations for the acquisition of the real property, and the
33 person leases or purchases comparable replacement real property
34 to conduct the displaced person's business or farm operation
35 within eighteen months of the date the person vacates the

1 real property or receives payment from the displacing agency
2 under another provision of this chapter, whichever is later.
3 The displacing agency shall determine whether a displacement
4 described in this subsection has occurred. The additional
5 payment shall include the following amounts:

6 *a.* If the person leases comparable real property, the
7 difference between the average monthly amount of the lease of
8 the comparable real property and the average monthly amount
9 of the lease for the real property acquired by the displacing
10 agency, multiplied by forty-two.

11 *b.* If the person purchases comparable real property to
12 conduct the person's business or operate the person's farm, an
13 amount calculated consistent with the provisions of subsection
14 1, paragraphs "a" and "c".

15 3. All determinations to carry out this section shall be
16 made in accordance with administrative rules adopted by the
17 department.

18 Sec. 13. EFFECTIVE UPON ENACTMENT. This division of this
19 Act, being deemed of immediate importance, takes effect upon
20 enactment.

21 Sec. 14. APPLICABILITY. This division of this Act applies
22 to programs or projects or condemnation proceedings pending or
23 commenced on or after the effective date of this division of
24 this Act.