

**Eminent Domain**  
**HF 2351**  
**Passed during Special Session**  
**July 14, 2006**

HF 2351 Relates to government authority, including eminent domain authority and condemnation procedures, and makes all government agencies with eminent domain power subject to Code chapters 6A and 6B when exercising that power. Sections 2, 3, 18 and 19 require an acquiring agency to exercise eminent domain only for a "public use, public purpose or public improvement" as defined in section 3. Sections 3, 30 and 32 address the use of eminent domain for aviation purposes. Sections 5 and 11 relate to judicial review of eminent domain authority if the owner, contract purchaser or tenant of property described in a condemnation application files a challenge in district court. Sections 6 and 18 provide an alternative "130 percent" purchase offer option; the alternative option may not be used when property is acquired for street or highway projects. Section 7 requires an acquiring agency to send notice to each property owner whose property is proposed to be acquired by eminent domain at least 14 days before eminent domain is approved by the acquiring authority; the section does not apply to street and highway projects undertaken by the state, a county, or a city. Section 13 addresses closed meetings of the compensation commission. Section 15 requires an acquiring agency to pay the reasonable cost of one appraisal, in addition to certain other costs, if the compensation commission award exceeds 110 percent of the final offer by the acquiring agency. Section 17 provides that only the appraisal prepared in accordance with Code section 6B.45 shall be forwarded to the compensation commission by the acquiring agency. Sections 20-22 relate to disposition of condemned property and require the property be first offered to the prior owner under certain circumstances. Section 26 prohibits charging rent to a person in possession of a property subject to condemnation until all or a portion of the compensation commission award has been paid to the condemnee. Section 27 provides that the approval of the board of supervisors is required in certain situations when entities created by or on behalf of one or more political subdivisions use eminent domain authority. Sections 29 and 30 amend the eminent domain authority of the Iowa Railway Finance Authority and of an aviation authority to be in accordance with Code chapters 6A and 6B. Section 49 provides various effective and applicability dates.

**HF 2351 (Eminent Domain)**  
**Comments Indexed by Code Section that are of interest to the DOT**

<u>Iowa Code</u>	<u>Bill #</u>	<u>2006 Comments</u>
6A.4	HF 2351	Section 1 keeps the condemned public way limit at 40 feet for agricultural lands or those lands with a single residence, but increases the condemned public way limit to 66 feet for all other uses. Section 1 takes effect upon enactment, July 14, 2006, and applies to applications for condemnation filed on or after July 14, 2006.
6A.21	HF 2351	Section 2 relates to the limitation on the definition of public use, public purpose, or public improvement. Section 2 takes effect upon enactment, July 14, 2006, and applies to applications for condemnation filed on or after July 14, 2006.
6A.22	HF 2351	Section 3 adds a new section defining "public use, public purpose, or public improvement" and setting additional limitations on the exercise of eminent domain power. One limitation prohibits the use of eminent domain to acquire private property in the unincorporated area of a county for use as an airport, airport system, or aviation facilities unless the county board of supervisors holds a public hearing and adopts a resolution approving the condemnation action. Approval by the board of supervisors is not required if certain conditions are met. Section 3 takes effect upon enactment, July 14, 2006, and applies to applications for condemnation filed on or July 14, 2006.
6A.22A	HF 2351	Section 4 adds a new section concerning an exception for certain urban renewal areas. This section requires certain action be taken by October 1, 2006, and October 1, 2007, and is repealed December 31, 2007. Section 4 takes effect upon enactment, July 14, 2006, and applies to applications for condemnation filed on or after July 14, 2006.
6A.23	HF 2351	Section 5 adds a new section concerning judicial review of eminent domain authority. Section 5 takes effect upon enactment, July 14, 2006, and applies to applications for condemnation filed on or after July 14, 2006. Section 5 also applies to applications for condemnation pending on July 14, 2006, if the appropriate parties have not been served with a notice of assessment pursuant to Code section 6B.8 as of July 14, 2006.
6B	HF 2351	Section 47 contains Code Editor directives to renumber several sections of Code chapter 6B. Section 47 takes effect upon enactment, July 14, 2006, and applies to applications for condemnation filed on or after July 14, 2006.
6B.2B	HF 2351	Section 6 relates to acquisition negotiations. States what is to be included in the purchase offer. Allows the acquiring agency the alternative to offer the owner 130 percent of the appraisal amount plus the expenses listed in Code section 6B.54, subsection 10. If the owner accepts this purchase offer, the owner is barred from claiming payment from the acquiring agency for any other expenses allowed by law. The option to make an alternative purchase offer does not apply when property is being acquired for street and highway projects undertaken by the state, a county, or a city. Section 6 takes effect January 1, 2007.
6B.2D	HF 2351	Section 7 adds a new section concerning the notice of intent to approve acquisition of property by eminent domain. This section does not apply to street and highway projects undertaken by the state, a county, or a city and certain other projects undertaken by a municipal utility or a city or county enterprise. Section 7 takes effect January 1, 2007.
6B.3	HF 2351	Sections 8-10 make changes concerning the application for condemnation, notice of the application, and deadline for appraisal of damages. Strikes language pertaining to agricultural land. Requires the applicant to mail a copy of the application by certified mail or cause the application to be served on any contract purchaser of record of the property or

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to any tenant known to be occupying the property. Clarifies that if the appraisal of damages is not made by the commission within 120 days of indexing, the proceedings are terminated and all rights and interests of the applicant arising out of the application for condemnation terminate. Sections 8 and 9 take effect upon enactment, July 14, 2006, and apply to applications for condemnation filed on or after July 14, 2006. Section 10 takes effect upon enactment, July 14, 2006.

6B.3A	HF	2351	Section 11 adds a new section allowing the property owner to challenge the exercise of eminent domain authority or the condemnation proceedings in the district court of the county in which the private property is situated as provided in new Code section 6A.23. Section 11 takes effect upon enactment, July 14, 2006, and applies to applications for condemnation filed on or after July 14, 2006.
6B.4A	HF	2351	Section 48 repeals Code section 6B.4A, which applies to the condemnation of agricultural land for industry. Section 48 takes effect upon enactment, July 14, 2006, and applies to applications for condemnation filed on or after July 14, 2006.
6B.8	HF	2351	Section 12 relates to the notice of assessment. Removes a reference to the compensation commission's authority under Code section 6B.4A to review an application by a city or a county for condemnation of agricultural land for an industry. Section 12 takes effect upon enactment, July 14, 2006, and applies to applications for condemnation filed on or after July 14, 2006.
6B.14	HF	2351	Section 13 concerns closed session meetings of the commissioners. Section 14 states that the commissioners, in determining fair market value, shall not consider only the assessed value of property for purposes of property taxation. Section 13 takes effect January 1, 2007. Section 14 takes effect upon enactment, July 14, 2006, and applies to applications for condemnation filed on or after July 14, 2006.
6B.33	HF	2351	Section 15 substitutes "acquiring agency" for "applicant" and requires the acquiring agency to pay the reasonable cost of one appraisal in addition to all costs of the assessment made by the compensation commissioners and reasonable attorney fees and costs incurred by the condemnee, if the award of the commissioners exceeds 110 percent of the final offer made by the acquiring agency. Section 15 takes effect upon enactment, July 14, 2006, and applies to applications for condemnation filed on or after July 14, 2006. Section 15 also applies to applications for condemnation filed pursuant to section 6B.3 that are pending on July 14, 2006, if the appraisal report required under Code section 6B.14 has not been filed with the sheriff as of July 14, 2006.
6B.42	HF	2351	Section 16 requires the acquiring agency to provide the payments and assistance required by Code chapter 316 as if the acquiring agency were a displacing agency. Code chapter 316 concerns relocation of persons displaced by highways. Section 16 takes effect upon enactment, July 14, 2006, and applies to applications for condemnation filed on or after July 14, 2006.
6B.45	HF	2351	Section 17 requires the acquiring agency, in determining fair market value of property, to not consider only the assessed value of property for purposes of property taxation. Section 17 also provides that only the appraisal prepared under Code section 6B.45 shall be forwarded to the compensation commission by the acquiring agency. Section 17 takes effect upon enactment, July 14, 2006, and applies to applications for condemnation filed on or after July 14, 2006.
6B.54	HF	2351	Section 18 relates to acquisition policies and expands Code section 6B.54 to apply to any public use, public purpose, or public improvement for which condemnation is sought. Adds language requiring the acquiring agency to make a good faith effort to acquire real

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property by negotiation as provided in Code section 6B.2B. States what is to be included in the purchase offer. Allows the acquiring agency the alternative to offer the owner 130 percent of the appraisal amount plus the expenses listed in Code section 6B.54, subsection 10. If the owner accepts this purchase offer, the owner is barred from claiming payment from the acquiring agency for any other expenses allowed by law. The option to make an alternative purchase offer does not apply when property is being acquired for street and highway projects undertaken by the state, a county, or a city. The portion of Section 18 amending subsection 3 takes effect January 1, 2007. The remaining portions of Section 18 take effect upon enactment, July 14, 2006, and apply to applications for condemnation filed on or after July 14, 2006. The portion of Section 18 adding subsection 12 also applies to applications for condemnation filed pursuant to Code section 6B.3 that are pending on July 14, 2006, if the appraisal report required under Code section 6B.14 has not been filed with the sheriff as of July 14, 2006.

6B.55	HF	2351	Section 19 expands Code section 6B.55 to apply to any public use, public purpose, or public improvement for which condemnation is sought. Section 19 takes effect upon enactment, July 14, 2006, and applies to applications for condemnation filed on or after July 14, 2006.
6B.56	HF	2351	Sections 20-22 relate to disposition of condemned property. New language provides that if an acquiring agency uses real property for the purpose stated in the condemnation application and then proposes to sell the property within five years to a private person or entity, it must first offer the property for sale to the prior owner. New language also sets the purchase price for sales to prior owners. Sections 20 and 22 take effect upon enactment, July 14, 2006, and apply to applications for condemnation filed on or after July 14, 2006. Section 21 takes effect upon enactment, July 14, 2006.
6B.56A	HF	2351	Section 23 adds a new section concerning the procedures that need to be followed when five years have elapsed since property was condemned and the property has not been used for the purpose stated in the application. Section 23 does not apply to property acquired for street and highway projects undertaken by the state, a county, or a city. Section 23 takes effect upon enactment, July 14, 2006, and applies to applications for condemnation filed on or after July 14, 2006.
6B.57	HF	2351	Section 24 makes coordinating amendments to the procedural compliance section. Section 24 takes effect upon enactment, July 14, 2006.
6B.58	HF	2351	Section 25 clarifies that the words "applicant" and "condemner" mean acquiring agency as defined in Code section 6B.58, unless the context clearly requires otherwise. Section 25 takes effect upon enactment, July 14, 2006.
6B.60	HF	2351	Section 26 adds a new section stating that rental charges shall not be charged to a person in possession of the property and shall not accrue against the property owner until all or a portion of the compensation commission award has been paid. Section 26 takes effect upon enactment, July 14, 2006, and applies to applications for condemnation filed on or after July 14, 2006.
6B.61	HF	2351	Section 27 adds a new section which provides that the approval of the board of supervisors is required in certain situations when entities created by or on behalf of one or more political subdivisions exercise eminent domain authority. Section 27 takes effect upon enactment, July 14, 2006, and applies to applications for condemnation filed on or after July 14, 2006.
327I.7	HF	2351	Section 29 gives the Iowa Railway Finance Authority the authority to exercise the power of eminent domain consistent with the provisions of Code chapters 6A and 6B. Section 29

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takes effect upon enactment, July 14, 2006, and applies to applications for condemnations filed on or after July 14, 2006.

330A.8	HF	2351	Section 30 gives aviation authorities the authority to exercise the power of eminent domain as provided in Code section 330A.13. Section 30 takes effect upon enactment, July 14, 2006, and applies to applications for condemnation filed on or after July 14, 2006.
364.4	HF	2351	Section 32 limits a city's ability to condemn property outside the city through eminent domain but identifies certain exceptions for which a city may use eminent domain subject to the provisions of Code chapters 6A and 6B. These exceptions include for the operation of a municipal airport and for the use of property for public streets and highways. Section 32 takes effect upon enactment, July 14, 2006, and applies to applications for condemnation filed on or after July 14, 2006.