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REPORT OF THE

EMINENT DOMAIN STUDY COMMITTEE

EMINENT DOMAIN STUDY COMMITTEE

Final Report for 1969 Interim

(Committee has requested authority to continue its study in 1971)

NOTE: This report was adopted by the Legislative Council as submitted. The Council received but did not act upon the accompanying minority report.

House Concurrent Resolution 21, 1969 Session of the Sixty-third General Assembly, directed that the Legislative Research Committee or its successor create a study committee to conduct a comprehensive study of the Iowa Code "relating to eminent domain . . . in order to provide for an up-dated and equitable law relating to eminent domain." The Concurrent Resolution directed that legislative members be chosen from appropriate standing committees of the House of Representatives and the Senate and that nonlegislative members known for special knowledge in the field of eminent domain be selected.

Accordingly, the Eminent Domain Study Committee was established by the Legislative Council in July, 1969. Legislators named to serve on the Study Committee were:

Senator James Briles, Corning
Senator Andrew Frommelt, Dubuque (Appointed to succeed
Senator J. Donald Weimer who resigned.)
Senator Herbert L. Ollenburger, Garner
Representative William J. Gannon, Mingo
Representative Edgar H. Holden, Davenport
Representative Delwyn Stromer, Garner

The following persons were named as nonlegislative advisory members to the Committee:

Mr. Ira Delk, Sioux City
Mr. Robert Mickle, Des Moines
Mr. William Pappas, Mason City (Appointed to succeed
Mr. Jack Frye who resigned.)
Mr. Hugo Schneklath, Eldridge

The Committee was directed by HCR 21 to submit a report to the second session of the Sixty-third General Assembly, but because of the wide scope of the study and the complexity of the present laws relating to eminent domain, the Committee finds that it is impossible to complete the project and for this reason is requesting that the study be continued through the next interim. The Committee submits this progress report to inform the General Assembly of its accomplishments to date, and its plans for completion of the project during 1970.

The Committee's organizational meeting was held on August 12, 1969, with Senator James Briles serving as temporary Chairman. The Committee elected Representative Edgar H. Holden as permanent Chairman, Senator James Briles as Vice Chairman, and Diane Devin, Research Analyst, Legislative Service Bureau, as Secretary. Mr. Burnette Koebernick, Legal Counsel, Legislative Service Bureau, serves as legal advisor to the Committee.

Eminent Domain has been defined as "The power of the nation or a sovereign state to have, or to authorize the taking of, private property for a public use without the owner's consent, conditioned upon the payment of a just compensation." A legislative body itself may exercise the power of eminent domain or it may delegate the power to a governmental subdivision, public agency, or private agency. Chapter 472 of the Code of Iowa outlines the general condemnation procedures to be used by most agencies which have been granted the right to exercise eminent domain. However, five other condemnation procedures are authorized in the Code: county boards of supervisors may condemn for changes in roads, streams, or dry runs; cities or towns for existing public utility plants; cities for existing bridges; individuals for drainage purposes; and persons, firms, corporations, or municipalities for dams or the development or utilization of water power.

Prior to the organizational meeting of the Study Committee, the Legislative Service Bureau conducted a computer search of the Code in order to identify all agencies and entities which have been granted the right to exercise eminent domain, and prepared a listing of such agencies and entities for Committee members.

At its organizational meeting the Committee decided to hold hearings and to invite representatives of the governmental agencies and subdivisions which have the power of eminent domain and representatives of the utility companies which may petition the Iowa State Commerce Commission for the right to exercise eminent domain, to attend a meeting, present written statements to the Committee, and to justify uses of eminent domain and explain the procedures used. Copies of all written statements received are available in the Legislative Service Bureau office.

Representatives of the following agencies and entities appeared at the Committee hearings: Executive Council, Board of Regents, Conservation Commission, Highway Commission, and Natural Resources Council. Counties were represented by persons from the County Engineers Association, and cities were represented by the Director of the League of Iowa Municipalities. Also appearing were representatives from: the Iowa Railway Committee, electric utilities, gas pipelines, other pipelines, and telephone companies.

Because there appeared to be dissatisfaction among landowners of procedures used in condemnation proceedings, the Committee invited representatives of the Iowa Farm Bureau Federation and the Iowa Farmer's Union to appear. In addition, many landowners from throughout Iowa who had land condemned during the past few years appeared or presented written statements outlining problem areas in present condemnation procedures and possible amendments to provide more equitable procedures.

Except for public utility companies, most agencies have been given an outright grant to exercise eminent domain. The general condemnation procedure established by Chapter 472 of the Code authorizes a six-man condemnation commission, commonly known as the sheriff's jury, to determine the condemnation award. After

the acquirer determines that he cannot obtain the land that is needed by negotiation and purchase, he institutes condemnation by filing an application with the sheriff of the county in which the land sought to be condemned is located, and a commission of six men is appointed to assess damages to the property being condemned. The Iowa Code establishes two separate procedures for selecting sheriff's jury members. The county sheriff appoints jurors if the jury's award is not payable from the state treasury, and when the jury's award is payable from the state treasury, the Chief Justice of the Iowa Supreme Court appoints jurors. Jurors selected by the county sheriff must be resident freeholders of the county in which they serve, but jurors selected by the Chief Justice must be residents of adjoining counties.

From testimony received at the hearings, the Committee concluded that the sheriff's jury should be retained because its nonadversarial proceedings appear to be equitable for both landowners and condemnors. The costs of the sheriff's jury are paid by the condemnor and because procedures are informal, it is not necessary for either party to be represented by an attorney. However, landowners objected to the method of selection of the sheriff's jury. In addition, they objected to the titles "sheriff's jury" and "condemnation commission" and suggested that the title be changed to "compensation commission".

The Committee recommends that the name of the sheriff's jury be changed to "compensation commission". It further recommends that the two different methods of selection of compensation commissioners be retained, but that members of compensation commissions, when the condemnor is an agency utilizing funds from the state treasury, be residents of the county in which the property to be condemned is located. The Committee recommends that the board of supervisors in each county annually appoint a compensation commission pool of not less than twenty-four individuals from which a judge of the District Court, or the Chief Justice of the Iowa Supreme Court, shall select six individuals to serve on each compensation commission. The twenty-four individuals shall all be resident freeholders of the county and one-third shall be owners of agricultural property, one-third realtors, and one-third men having knowledge of property values in the county. The compensation commissions, composed of six persons, shall be selected with the same proportion of owners of agricultural property, realtors, and men having knowledge of property values as the original list.

The Committee considered allowing the condemnor and the condemnee to each strike one name from the six members of the compensation commission, but rejected such a plan. The Committee decided that since sheriffs' juries presently may determine the damages and value of several parcels of land at one time, allowing each landowner to strike one person does not appear feasible. The Committee believes that the additional requirements for selection of such commissions will improve the procedures.

Although it is not required that either party be represented by legal counsel at hearings held by the compensation

commission, landowners who are represented by legal counsel and who may employ appraisers or other experts are not compensated for such expenses. The Committee recommends that if legal counsel has been employed by the landowner and other expenses have been incurred, and if the compensation commission awards the landowner at least 110 percent of the final offer of the condemnor before condemnation was instituted, reasonable attorney fees and other expenses which the condemnee may have incurred should be paid by the condemnor. The condemnor must submit his final offer in writing.

Testimony at hearings indicated that the procedures followed by sheriff's juries vary due to the fact that no uniform instructions for members are available. The Committee recommends that the Supreme Court provide for the preparation of a uniform set of instructions for members of condemnation commissions. Copies of the instructions must be distributed to commission members at the hearing and the instructions must be read orally. The Committee further determined that the compensation paid members of sheriff's juries varies, and recommends that members of compensation commissions receive \$50 per day and reasonable and necessary expenses.

Testimony at hearings indicated that landowners object to offers of lump-sum payments by governmental subdivisions and agencies for land to be used for highway and road purposes. The Committee recommends that upon request of the landowner, the governmental subdivision or agency make available information relating to actual land value, value of damages, and value of loss of access.

Condemnation procedures in which the condemnor is an electric utility or a pipeline company differ because such utilities are not given an outright grant of eminent domain, but must secure the right to exercise eminent domain from the Iowa State Commerce Commission for each specific project. Chapters 489 and 490 of the Code outline the specific procedure which must be used. At the hearings, it was disclosed that both electric utility companies and pipeline companies attempt to purchase as many easements as possible before applying to the Commerce Commission for a franchise or permit to construct the line. If all easements can be purchased, the company will not request the right to exercise eminent domain. Landowners expressed objection to such a procedure, since electric utility and pipeline companies infer in negotiations with landowners that the right to exercise eminent domain has already been, or will be, granted. In addition, Chapter 489 of the Code authorizes the Commerce Commission to examine the proposed route, or cause any engineer selected by it to do so, to determine whether the proposed route is necessary to serve a public use. The factors to be considered in determining a public use appear to be unclear.

In order that the landowner may become more knowledgeable about the project before he has been approached for purchase of an easement, the Committee recommends that legislation be enacted providing that every electric utility company and pipeline company send notice by certified mail to persons owning land affected by

any project prior to purchasing land or securing easements. The notice will inform landowners of an informational meeting which will be held in each county where land is located which is affected by the project. Representatives of the utility company or pipeline company and the Commerce Commission will be present at each informational meeting to explain the purposes of the project, the potential route of the project, the condemnation procedures, and owners' rights. The certified letter containing notification of the meeting will also outline the rights of the landowners. Landowners will be allowed to ask any questions relating to the project and condemnation procedures. Informational meetings will be required before construction of any electric transmission line of 34.5 kilovolts or more and longer than one mile, and for construction of any pipelines carrying greater than 125 pounds pressure per square inch and longer than ten miles.

The Committee further recommends that in a utility company's request for a franchise or permit, the company must prove that the project reflects a reasonable relationship to an overall plan for the transmission of electric current to serve the public need. The utility company when proving public use must show the relationship of the project to existing development, comprehensive plans which have been developed, the people served at the present time, the future population, the future economic development of the area, existing public utility systems, parallel routes now existing, other proposals of the utility company which are planned for the future, and the investigation of pertinent alternate routes and pertinent alternate methods of supply. The Committee recommends that the utility company also show how the facility will coordinate with existing zoning regulations and future land-use programs, possible use of existing public rights-of-way, the effect of the project on the general economy, and inconvenience to the property owners affected. The Committee recommends that the Commerce Commission be required to examine the proposed routes or cause any engineer selected by it to do so. The Committee further recommends that after the Commerce Commission grants a franchise, the utility company be automatically granted the right to exercise eminent domain for that project.

Testimony by landowners and electric utility companies indicated that it is not necessary that electric utility companies obtain a franchise to construct generating facilities, although the construction of such generating facilities will necessarily require franchises from the Commerce Commission for the construction of lines from the facilities to the consumer. The Committee recommends that electric utility companies be required to obtain franchises for the construction of generating facilities.

The Committee decided that the procedure for appeal from a decision of the Commerce Commission on the granting of an electric transmission franchise is unclear, and it recommends that an appeals procedure be added to Chapter 489 of the Code similar to the procedure set forth in sections 490A.12 through 490A.19 of the Code.

Representatives of the Iowa State Highway Commission stated that relocation assistance is paid to landowner when home-

steads are taken for projects which involve federal funds. The Committee discussed such a procedure, but decided to defer to the Federal Highway Programs Study Committee for recommendations.

After holding hearings, the Committee studied the grant of eminent domain to each agency and entity and recommends that the power of eminent domain be repealed for the following: The Armory Board for armories; counties, cities, and towns for sites for memorial halls or monuments; county boards of supervisors for limestone quarries; the Highway Commission for rights-of-way for farm-to-market roads and for acquisition of rights-of-way for flight strips; county boards of library trustees for public libraries; persons and corporations for the removal of water covering coal resources; persons and corporations for utilizing water power in the state; county fair societies and county or district agricultural societies for fairgrounds; and any person and corporation for the construction of channels, roads, and bridges.

The Committee considered requiring the establishment of utility corridors and the concept of an annual rental for easements, but after study determined that no recommendations should be made.

During the course of the study, the Legislative Service Bureau prepared and distributed to Committee members the following materials:

1. Compilation I, Information Relating to Condemnation Commissions in Selected States.
2. Compilation II, Provisions Relating to Compensation and Damages.
3. Compilation III, Provisions Relating to Public Convenience and Necessity in Selected States.
4. Sections of the Code relating to condemnation procedures specified in addition to Chapter 472 of the Code.
5. Copies of the Eminent Domain Code of Pennsylvania.
6. List of recommendations submitted to Eminent Domain Study Committee by persons and organizations.
7. The power of eminent domain and its exercise by the state of Iowa, its political subdivisions, persons, and corporations.
8. "Contemporary Studies Project: New Perspectives on Iowa Eminent Domain", Iowa Law Review, April, 1969, Volume 54, Number 5.
9. Areas which might be considered in a study of eminent domain law as suggested by the article "Contemporary Studies Project: New Perspectives on Iowa Eminent Domain".

10. "Jury Instructions in Eminent Domain Cases", North Dakota Law Review, May, 1965, Volume 41, Number 4.
11. Copies of bills relating to eminent domain presently in legislative committees for consideration by the 1970 Session of the Sixty-third General Assembly.

These materials, as well as the written statements presented at the Committee hearings and the minutes of all Committee meetings, are available in the Legislative Service Bureau office.

House Concurrent Resolution 21 directs that a report of the study shall be prepared and submitted to members of the Sixty-third General Assembly and that the report be accompanied by legislative bill drafts designed to carry out the recommendations of the Committee. The Committee has determined that it cannot complete a comprehensive revision of eminent domain laws by the date of the convening of the 1970 Session of the General Assembly. It recommends that the Eminent Domain Study Committee be allowed to continue its work during the 1970 legislative interim and submit its final report to the 1971 Session of the Sixty-fourth General Assembly. The Committee hopes to continue its study and recodification of eminent domain laws into one comprehensive chapter of the Code, and its revision of Chapter 472 of the Code. The Committee has not completed its study of procedures relating to damages and compensation to landowners. The Committee has not arrived at a definite conclusion as to whether pipeline companies should continue to exercise the right of eminent domain as presently granted. The Committee wishes to study the additional condemnation procedures outside Chapter 472 of the Code to determine the necessity of retaining six different condemnation procedures.

The following bills have been drafted by the Legislative Service Bureau to implement the recommendations of the Eminent Domain Study Committee:

1. An Act which repeals the power of eminent domain for certain agencies and entities.
2. An Act which establishes procedures for selection and operation of compensation commissions.
3. An Act which relates to the exercise of eminent domain by electric utilities.
4. An Act which relates to the exercise of eminent domain by pipeline companies.
5. An Act which requires the enumeration of damages in land acquisition cases for highway purposes upon the request of the landowner."

EMINENT DOMAIN STUDY COMMITTEE

Minority Report

Submitted by Committee member
Ira E. Delk

December 12, 1969

The Honorable Edgar H. Holden, Chairman
Legislative Study Committee on Eminent Domain
Rural Route 3
Davenport, Iowa 52804

Dear Mr. Holden:

I feel I must file a minority report on two items included in the recommendations of the Study Committee on Eminent Domain.

I do not agree that power generating facilities should be added to Chapter 489, Code of Iowa 1966. I cannot agree that this matter has any relevance to the subject matter of our Committee, that is, a study of the power of eminent domain. Even if there is a relationship, it is so remote and the factors on the other side of the question would seem to indicate that this action should not be taken. We did not have a single person appear at any of our committee meetings indicating any problem so far as the construction of generating facilities.

The responsibility for seeing that the consumers of electricity in the State of Iowa have a sufficient supply of electric energy lies with the management of the utility companies, be they investor owned, cooperatives or municipals. It would not appear to be desirable to place the decision for the construction of additional facilities in a governmental body but still leave the responsibility with the utility management. The requirements that the majority report includes would obviously make it more difficult to finance construction of generating plants in Iowa and would lead to a greater exodus of such plants to adjoining states. We already see some utilities that are participating in units under construction in adjoining states, whereas it would appear to be desirable that such facilities be constructed in Iowa.

If a utility needs the right of eminent domain to obtain a site for a generating facility under the provisions of Section 489.15, Code of Iowa 1966, it must go to the Iowa State Commerce Commission to obtain the right of eminent domain. No one would quarrel with that provision. If it is thought to be desirable to go further than that, it would appear that an in-depth study should be made of the various problems of extending Commerce Commission jurisdiction into this field, and such a recommendation should not come from a very cursory examination by a committee studying eminent domain.

The second area in which I must dissent is the proposal for informational meetings. I want to say at the offset that I am not opposed to providing information to property owners involved in potential condemnation, but the procedure that has been recommended by the committee majority is unworkable from a practical standpoint. It would require informational meetings for renewals of franchises where facilities are already in place. It would require informational meetings for facilities that are constructed or to be constructed, even though the right of eminent domain is not requested or used. It would place the responsibility for conducting such meetings on the Commerce Commission, whose workload already provides insufficient time to attend to all matters. Since the recommendation would not allow any right of way to be purchased until after the informational meeting is held, it would tend to encourage resistance where none might otherwise exist and would create more condemnation and not less. The information which would be required in the notice would mean that final engineering would have to be done before such a meeting were held. On major projects, where right-of-way acquisition is often spread over one or two years, a project could be delayed for that long because of this requirement. We know that in many instances construction of transmission facilities must be accomplished rather rapidly to accommodate the power supply of a new industry or the expansion of existing industry. The delays that this requirement would cause could place Iowa in a position similar to some of the Eastern states where power shortages have resulted.

There are alternatives that would accomplish the same purpose but would not impose the delay of the informational meeting. One alternative would be to have a form prepared by the Commerce Commission in which the information on the project would be placed and require that this be given to each property owner at the time the initial contact for the procurement of the right of way is made. As a part of a franchise application, there would be included an affidavit that the information had been supplied to each property owner. Another alternative would be to conduct the formal hearing of the Commerce Commission in the locality of the proposed construction. This alternative, however, does not provide the information in advance of the procurement of the right of way.

I concur in the other recommendations of the Committee and feel that they will go a long way in solving a number of the problems that have arisen in the field of eminent domain.

Yours very truly,

/s/ Ira E. Delk

Ira E. Delk
Attorney

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FINAL REPORT
OF THE
EMINENT DOMAIN STUDY COMMITTEE

The Eminent Domain Study Committee was established in 1969 by House Concurrent Resolution 21 for the purpose of conducting a comprehensive study of the Iowa Code relating to eminent domain and to report to the Legislative Council and the Sixty-third General Assembly, Second Session. Since the Eminent Domain Study Committee was unable to complete its study during the 1969 legislative interim, the Committee requested from the Legislative Council that it be allowed to continue functioning during the 1970 legislative interim. Accordingly in May, 1970 the Legislative Council by motion voted to recreate the Eminent Domain Study Committee to carry out further studies during the 1970 legislative interim. The Legislative Council named Representative Berl Priebe, Algona, to replace Representative William Gannon, Mingo, and added Senator James Griffin, Council Bluffs, and Representative Harold O. Fischer, Wellsburg, Chairmen of the Senate and House Committees on Commerce, respectively, to the Study Committee membership.

Holdover members of the Committee are:

Representative Edgar H. Holden, Davenport,
Chairman
Senator James Briles, Corning, Vice Chairman
Senator Andrew G. Frommelt, Dubuque
Senator Herbert L. Ollenburg, Garner
Representative Delwyn Stromer, Garner
Mr. Ira Delk, Sioux City
Mr. Robert Mickle, Des Moines
Mr. William Pappas, Mason City
Mr. Hugo Schnekloth, Eldredge

The Committee was concerned in 1969 with improving the general condemnation procedures and the procedures by which the right to exercise eminent domain is granted to pipeline companies and electric utility companies by the Iowa State Commerce Commission. The following bills recommended by the Eminent Domain Study Committee were enacted by the Sixty-third General Assembly, Second Session:

1. S.F. 1135 (Chapter 1030), An Act which repealed the power of eminent domain for certain agencies and entities.
2. S.F. 1171 (Chapter 1225), An Act which establishes procedures for selection and operation for compensation commissions.
3. S.F. 1185 (Chapter 1230), An Act which relates to the exercise of eminent domain by electric utilities.

4. S.F. 1184 (Chapter 1231), An Act which relates to the exercise of eminent domain by pipeline companies.
5. S.F. 1136 (Chapter 1226), An Act which requires the enumeration of damages in land acquisition cases for highway purposes upon the request of the landowners.

At meetings held during the 1970 legislative interim a number of persons and organizations appeared before the Committee and presented testimony. Included among them were the Attorney General of Iowa, representatives from the Commerce Commission, the Director of the Iowa Real Estate Commission, representatives from the Iowa State Highway Commission and the Iowa County Engineers Association, a registered surveyor, appraisers, landowners, representatives from the Iowa Farmers Union, the Iowa Farm Bureau Federation, Northern Natural Gas Company, Corn Belt Power Cooperative, Iowa Electric Light and Power Company, and the Iowa Railway Committee.

Prior to the final passage by the General Assembly of Senate Files 1184 and 1185, an Opinion from the Iowa Attorney General regarding the constitutionality of the two bills had been obtained. Attorney General Turner's Opinion, issued April 14, 1970, declared that Senate Files 1184 and 1185 as introduced were unconstitutional. The two bills, which were enacted and signed into law by the Governor, require electric utility and pipeline companies to hold informational meetings in each county affected by a proposed project prior to submitting an application to the Iowa State Commerce Commission for a permit or franchise for the project and prior to negotiations for easements. This procedure is similar to the procedure presently required for federal aid highway projects. The two bills had been amended in both houses but basically retained the Committee recommendations.

At the first meeting of the Eminent Domain Study Committee during the 1970 interim, the viewpoints of the Attorney General's Opinion were questioned because the Opinion was based on the bills as originally introduced and not as finally adopted. Because of this fact the Committee decided that another Opinion should be requested of the Attorney General. The Attorney General indicated in correspondence addressed to Chairman Holden, dated September 18, 1970, that the Acts as they were finally approved are not substantially different from the bills as introduced, and the unconstitutional features remain. After considerable discussion the Committee voted to recommend changes in Senate Files 1184 and 1185 to require that landowners receive written notice of their rights and a description of a proposed project. The informational meetings are no longer required, but the hearing by the Iowa State Commerce Commission, if one is required, must be held in a county affected by the proposed project if requested by 5% of the affected landowners in the county. Copies of Bills XVIII and XIX are attached to the Report. The Legislative Council disapproved Bills XVIII and XIX.

Because grants of the right to exercise eminent domain are distributed throughout the Code, the Eminent Domain Study Committee recommends that all sections relating to condemnation be codified into one chapter of the Code. A copy of Bill XV is attached to the Report.

The Committee had postponed until the 1970 interim discussion concerning the retention of the five special condemnation procedures prescribed in the Code and had agreed that Chapter 472 should be used for all condemnation cases, if possible. The first additional condemnation procedure is set forth in Chapter 306 of the Code and authorizes county boards of supervisors to take land for changes in roads, stream beds, or dry runs. Although some members of the Committee expressed the belief that the use of the special procedure should be restricted to projects involving only one of two parcels of property and less than one mile in length, the Committee recommends that the use of the special procedure should be eliminated. A copy of Bill XIII which requires county boards of supervisors to use the procedures of Chapter 472 is attached to this Report.

The Municipal Laws Review Study Committee was consulted regarding the use of Chapter 397 of the Code, which allows a city or town to condemn existing public utility plants and Chapter 383 of the Code which allows a city to condemn an existing bridge. The Municipal Laws Review Study Committee recommended that cities be given a general grant of the right to exercise eminent domain for any public purpose, and section 20 of Bill XV contains the general grant for cities. The Committee recommends that the special procedure outlined in Chapter 397 of the Code be retained, but be transferred to Chapter 472 and that the special procedure outlined in Chapter 383 of the Code be eliminated. Copies of Bills XXI and XXII are attached to the Report.

The special procedure in Chapter 465 of the Code, which allows landowners to take the land of others for drainage purposes was discussed by the Committee, and the Committee recommends Bill III, a copy of which is attached to this Report, which eliminates the special procedure for determining compensation and specifies the use of Chapter 472.

The Committee recommends that the right of eminent domain granted in Chapter 469 of the Code to any person, firm, corporation or municipality for the purpose of taking lands for construction of a dam, raceway, canal, or other construction necessary to utilize water power, be repealed. A copy of Bill IV is attached to this Report.

The Committee heard testimony which indicated that there appears to be ambiguity in the interpretation of section 490.2 regarding the definition of a pipeline. Pipeline is defined to "include and mean any pipe, pipes or pipelines used for the transportation for transmission of gas, gasoline, oils or motor fuel and/or inflammable fluids within or through this state." Since the number of substances being transported by pipelines is con-

stantly increasing, the Committee determined that in order for such pipelines to be regulated by the Iowa State Commerce Commission, the definition of pipelines should be broadened to include any solid, liquid, or gaseous substance, except water. The Committee recommends Bill XIV, a copy of which is attached to the Report, which broadens the definition of a pipeline.

The Committee heard testimony from representatives of the Iowa State Highway Commission and the County Engineers Association regarding section 472.26 of the Code. Section 472.26 prohibits landowners from being dispossessed of their residences, dwelling houses, outhouses, orchards, or gardens until the damages have been finally determined and paid. Testimony indicated that highway projects and county road projects can be delayed for long periods of time because of one or two landowners. The Committee recommended that if the property is condemned for highway purposes, the condemning authority be allowed to take possession of the property 180 days after the application for condemnation has been filed. A copy of Bill V is attached to this Report. The Legislative Council Disapproved Bill V.

The Committee discussed the present law relating to licensing of real estate brokers and salesmen with Mr. Cecil Galvin, Director, Iowa Real Estate Commission. The Committee had heard testimony from landowners that persons seeking to acquire easements for pipeline companies based in other states did not possess Iowa real estate salesmen's or brokers' licenses. Mr. Galvin indicated that if a person is purchasing real estate on a contract basis for a firm, he should be licensed under present law. The Committee agreed that the present law appears to be clear, but should be enforced and Mr. Galvin was requested to correspond with utility companies operating in Iowa and to inform them that persons purchasing land for them on a contract basis must be licensed by the Iowa Real Estate Commission.

The Committee received copies of a booklet issued by the Iowa State Highway Commission entitled Utility Accommodation Policy of the Iowa State Highway Commission. Since the booklet was never submitted to the Departmental Rules Review Committee for its approval, the Committee directed Chairman Holden to request an Opinion from the Attorney General regarding the legality of the utility accommodation policy of the Highway Commission.

The Committee discussed payment of damages and compensable items of damage with landowners, appraisers, representatives of the Highway Commission, pipeline companies, electric utility companies, the County Engineers Association, the Farm Bureau Federation, and the Farmers Union.

In connection with a study of factors to be considered in compensation and damage awards, the Committee, after studying legislation from other states and a copy of a Model Eminent Domain

Code prepared by the American Bar Association, recommends the following bills:

1. A bill to require that landowners be informed that they may renegotiate damages for a period of three years following the original damage settlement.
2. A bill allowing the county board of supervisors to employ a person for the purpose of insuring that subsurface improvements to property are replaced during the construction period. The inspector must be paid by the utility company.

Copies of Bills IX and XXIII are attached to the Report.

The Eminent Domain Study Committee requested that a bill be prepared to establish a damage commission which would be composed of three members selected from the list of persons eligible to serve as compensation commissioners which could be used to arbitrate disagreements regarding compensation for damages. The bill did not receive the necessary seven votes to recommend it to the Legislative Council.

The Committee also discussed the concept of reimbursing a landowner, whose property is taken for a public use, for any increased interest costs or other costs required in the acquisition of similar property. The recommendation did not receive the necessary seven votes to recommend it to the Legislative Council.

The Committee voted to make no recommendations regarding the constitutional provision which prohibits offsetting benefits to a landowner against damages.

Many persons appearing before the Committee expressed concern about a bill which was enacted during the 1970 legislative session which requires condemnors to furnish landowners with a legal description of the portion of land taken and a legal description of the remainder. Surveyors are concerned that the legal description of the remainder would provide landowners with a survey of their property, and private surveyors will no longer be needed. Testimony was received concerning the types of legal descriptions provided which are a center line description by the Highway Commission and a metes and bounds description by the county engineers. The Committee recommends Bill VI which requires that the description of the remainder be compatible with the existing abstract description of the entire tract of land, and that center line descriptions are compatible only when they contain reference points which are a part of and tied to the abstract description.

The Committee discussed Senate File 1157, enacted during the 1970 legislative session, which requires the board or commission having jurisdiction and control over roads to provide alternative access facilities to landowners whose regular access is no

longer usable. The Committee discussed with representatives from the Highway Commission the manner in which Senate File 1157 is being implemented and discovered that the Highway Commission is not maintaining temporary alternative access facilities. The Committee recommends an amendment to Senate File 1157 to specify that both temporary and permanent access facilities must be maintained by the board or commission having jurisdiction and control over such roads. A copy of Bill XI is attached to this Report.

The Committee heard testimony from representatives of the Iowa Railway Committee and from landowners who were concerned about the reversion of land which has been abandoned by railroads. The Committee does not recommend any changes in the railroad laws at this time. The Committee also discussed payment of damages for underground gas storage facilities, but does not recommend any changes in the laws at this time.

A series of bills are recommended by the Eminent Domain Study Committee which are corrective in nature and relate to the bills enacted during the Sixty-third General Assembly, Second Session. The Committee recommends that Senate Files 1184 and 1185 be amended to exempt short distance, low voltage or low pressure electric lines or pipelines from the additional petition and informational meeting requirements. The Committee recommends an amendment to section 489.6 of the Code, to remove the words "board or". The Committee recommends a change in Senate File 1171, which establishes compensation commissions, to place a dependent clause within the correct sentence. The Committee also recommends that Senate File 1184 be amended to conform with language used in Senate File 1185. Copies of these bills are attached to the Report.

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