

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1366

Introduced by Cavanaugh, J., 9; Bostelman, 23; Brewer, 43.

Read first time January 17, 2024

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to real property; to amend sections 76-701,
- 2 76-702, 76-704.01, 76-710.04, and 76-714, Reissue Revised Statutes
- 3 of Nebraska; to change provisions relating to the use of eminent
- 4 domain; and to repeal the original sections.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 76-701, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 76-701 For purposes of sections 76-701 to 76-726:

4 (1) Condemner means any legal entity that by law has been granted
5 the right to exercise the power of eminent domain and includes the state
6 and any governmental or political subdivision thereof;

7 (2) Condemnee means any person, partnership, limited liability
8 company, corporation, or association owning or having an encumbrance on
9 any interest in property that is sought to be acquired by a condemner or
10 in possession of or occupying any such property;

11 (3) Property means any such interest in real or personal property as
12 the condemner is empowered by law to acquire for public use;~~and~~

13 (4) County judge means the county judge of the county where
14 condemnation proceedings provided by such sections are had; and -

15 (5) Good faith means an attempt to agree, consisting of an offer of
16 at least fair market value or that a reasonable owner would accept, and a
17 reasonable effort to induce the owner to accept it.

18 Sec. 2. Section 76-702, Reissue Revised Statutes of Nebraska, is
19 amended to read:

20 76-702 After negotiations in good faith have failed, any condemner,
21 or his or her representative, upon proper identification and after
22 informing the condemnee of the contemplated action is authorized to enter
23 upon any land for the purpose of examining and surveying same in
24 contemplation of bringing or during the pendency of condemnation
25 proceedings under sections 76-701 to 76-724. When ; ~~Provided,~~ when an
26 inventory is made of the damage to personal property by reason of
27 examining or surveying the land by the condemner, or his or her
28 representatives, a copy of the inventory shall be delivered to the
29 condemnee.

30 Sec. 3. Section 76-704.01, Reissue Revised Statutes of Nebraska, is
31 amended to read:

1 76-704.01 A petition filed pursuant to section 76-704~~7~~ shall
2 include:

3 (1) A statement of the authority for the acquisition;

4 (2) The nature of and necessity and purpose for which the land will
5 be used;

6 (3) The title, right, or interest in the property to be acquired;

7 (4) The quantity needed to fulfill the public purpose for which
8 taken;

9 (5) Reasons for selecting the particular location or route;

10 (6) Evidence of attempts to negotiate in good faith with the
11 property owner, which includes, but is not limited to, an appraisal that
12 is shared with the owner at the time of negotiations; and

13 (7) If approval of any other agency is required, the condemner shall
14 should set forth the approval in writing of such agency.

15 Sec. 4. Section 76-710.04, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 76-710.04 (1) A condemner shall ~~may~~ not take property through the
18 use of eminent domain under sections 76-704 to 76-724 if the taking is
19 primarily for an economic development purpose.

20 (2) A condemner that is a political subdivision of this state shall
21 not take property through the use of eminent domain under sections 76-704
22 to 76-724 within the State of Nebraska outside of the boundaries of such
23 political subdivision unless a majority vote of the governing body of the
24 county, city, or village where the property is located approves such
25 taking.

26 (3) A condemner that is a private entity shall not take property
27 through the use of eminent domain under sections 76-704 to 76-724:

28 (a) For use of pipelines unless all pipeline routes are approved by
29 the Public Service Commission; or

30 (b) Within the State of Nebraska unless a majority vote of the
31 governing body of the county, city, or village where the property is

1 located approves such taking.

2 (4) (2) For purposes of this section, economic development purpose
3 means taking property for subsequent use by a commercial for-profit
4 enterprise or to increase tax revenue, tax base, employment, or general
5 economic conditions.

6 (5) (3) This section does not affect the use of eminent domain for:

7 (a) Public projects or private projects that make all or a major
8 portion of the property available for use by the general public or for
9 use as a right-of-way, aqueduct, pipeline, transmission line, or similar
10 use;

11 (b) Removing harmful uses of property if such uses constitute an
12 immediate threat to public health and safety;

13 (c) Leasing property to a private person who occupies an incidental
14 part of public property or a public facility, such as a retail
15 establishment on the ground floor of a public building;

16 (d) Acquiring abandoned property;

17 (e) Clearing defective property title;

18 (f) Taking private property for use by a utility or railroad;

19 (g) Taking private property based upon a finding of blighted or
20 substandard conditions under the Community Development Law if the private
21 property is not agricultural land or horticultural land as defined in
22 section 77-1359; and

23 (h) Taking private property for a transmission line to serve a
24 privately developed facility generating electricity using wind, solar,
25 biomass, or landfill gas. Nothing in this subdivision shall be construed
26 to grant the power of eminent domain to a private entity.

27 Sec. 5. Section 76-714, Reissue Revised Statutes of Nebraska, is
28 amended to read:

29 76-714 The interest in the property acquired by the condemner shall
30 be such title, easement, right-of-way, or use as is expressly specified
31 in or necessarily contemplated by the law granting to the condemner the

1 right to exercise the power of eminent domain. The condemner shall not
2 dispossess the condemnee until the condemner is ready to devote the
3 property to a public use, and such title or interest as the condemner
4 seeks to acquire shall not be complete until the property is put to the
5 public use for which taken. If the property is not used or is no longer
6 necessary for the public use, the condemnee shall have the right to have
7 the title or interest returned for the amount of the condemnation award.

8 Sec. 6. Original sections 76-701, 76-702, 76-704.01, 76-710.04, and
9 76-714, Reissue Revised Statutes of Nebraska, are repealed.