

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 1134

Introduced by Avery, 28.

Read first time January 19, 2012

Committee: Judiciary

A BILL

1 FOR AN ACT relating to eminent domain; to amend sections 25-2501,
2 25-2502, 25-2503, 25-2504, 25-2505, 25-2506, and 76-704,
3 Reissue Revised Statutes of Nebraska, and section
4 2-3234.07, Revised Statutes Cumulative Supplement, 2010;
5 to provide and change provisions relating to agency
6 condemnation of property for a public purpose; to define
7 and redefine terms; to provide a penalty; to harmonize
8 provisions; to provide an operative date; and to repeal
9 the original sections.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 2-3234.07, Revised Statutes Cumulative
2 Supplement, 2010, is amended to read:

3 2-3234.07 Acquisition of private real property, or an
4 interest therein, and any utilization of eminent domain approved
5 under sections 2-3234.02 to 2-3234.09 to establish a proposed trail
6 shall be conducted in the manner and subject to the requirements
7 provided in sections 25-2501 to 25-2506 and sections 7 to 11 of this
8 act and 76-701 to 76-726.

9 Sec. 2. Section 25-2501, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 25-2501 (1) It is the intent and purpose of sections
12 25-2501 to 25-2506 and sections 7 to 11 of this act to establish a
13 uniform procedure to be used in ~~acquiring~~ ~~condemning~~ private property
14 for a public purpose by the State of Nebraska and its political
15 subdivisions and by all publicly and privately owned public-utility
16 corporations, and common carriers, and other agencies which have been
17 granted the power of eminent domain. Such sections shall not apply
18 to:

19 ~~(1) Water transmission and distribution pipelines and~~
20 ~~their appurtenances and common carrier pipelines and their~~
21 ~~appurtenances;~~

22 ~~(2) Public utilities and cities of all classes and~~
23 ~~villages when acquiring property for a proposed project involving the~~
24 ~~acquisition of rights or interests in ten or fewer separately owned~~
25 ~~tracts or when the acquisition is within the corporate limits of any~~

1 ~~city or village;~~

2 ~~(3) Sanitary and improvement districts organized under~~
 3 ~~sections 31-727 to 31-762 when acquiring easements for a proposed~~
 4 ~~project involving the acquisition of rights or interests in ten or~~
 5 ~~fewer separately owned tracts;~~

6 ~~(4) Counties and municipalities which acquire property~~
 7 ~~through the process of platting or subdivision or for street or~~
 8 ~~highway construction or improvements;~~

9 ~~(5)-(a)~~ Common carriers subject to regulation by the
 10 Federal Railroad Administration of the United States Department of
 11 Transportation; or

12 ~~(6)-(b)~~ The Department of Roads when ~~acquiring~~ condemning
 13 property for highway construction or improvements.

14 (2) It is the intent of the Legislature to provide
 15 procedural oversight of agencies and their use of eminent domain, as
 16 it is the Legislature that grants the power to condemn private
 17 property when a public purpose is identified to meet a public need.

18 (3) It is the intent of the Legislature that the power of
 19 eminent domain under sections 76-704 to 76-724 shall be exercised as
 20 an action of last resort when good faith negotiations between
 21 property owners and the agency have failed.

22 Sec. 3. Section 25-2502, Reissue Revised Statutes of
 23 Nebraska, is amended to read:

24 25-2502 As used in sections 25-2501 to 25-2506 and
 25 sections 7 to 11 of this act and 70-301, unless the context otherwise

1 requires:

2 ~~(1) Agency shall include the State of Nebraska and any~~
3 ~~department, board, commission, or similar entity thereof which~~
4 ~~possesses the authority to acquire property either with or without~~
5 ~~the use of eminent domain, any political subdivision of the State of~~
6 ~~Nebraska, and any privately owned public utility corporation or~~
7 ~~common carrier not exempted by section 25-2501 which possesses the~~
8 ~~authority to acquire property through the use of eminent domain;~~

9 ~~(2) Property shall include any right or interest in real~~
10 ~~property, including but not limited to easements, but shall not~~
11 ~~include easements for public utilities located adjacent to and within~~
12 ~~ten feet of a public road right of way; and~~

13 ~~(3) Negotiations shall mean communications between~~
14 ~~representatives of the agency and the property owner or his~~
15 ~~representatives who are specifically authorized to attempt to reach~~
16 ~~agreement on terms by which the agency shall acquire such property.~~

17 (1) Agency includes (a) governmental entities given the
18 authority by statute to condemn property by eminent domain including,
19 but not limited to, the State of Nebraska, its departments and
20 agencies, municipalities, counties, utilities, the University of
21 Nebraska and state colleges, public schools, irrigation districts,
22 library boards, airport authorities, pipelines, county fair boards,
23 railroads, natural resources districts, sanitary and improvement
24 districts, bridge commissions, rural water districts, the Nebraska
25 Historical Society, a metropolitan transit authority, drainage

1 districts, and community redevelopment authorities and (b) any
2 company, corporation, or association formed, created, or incorporated
3 in the United States or a foreign country for the purpose of
4 providing services for a public purpose;

5 (2) Property means any right or interest in real or
6 personal property, including, but not limited to, temporary private
7 easements and rights-of-way, but does not include easements for
8 public utilities located adjacent to and within ten feet of a public
9 right-of-way; and

10 (3) Public purpose means (a) to provide public services
11 with or without cost to the recipient, including, but not limited to,
12 the general operation of government; public education; public safety;
13 transportation; public works; civil and criminal justice; public
14 health and welfare; developments by a public housing authority;
15 parks; cultural, recreational, and community development; and
16 cemetery purposes or (b) to carry out the duties and responsibilities
17 conferred by law with or without consideration. Public purpose does
18 not include leasing of property to a private party unless the lease
19 of the property is at fair market value for a public purpose. Leases
20 of property by a public housing authority to low-income individuals
21 as a place of residence are for the authority's public purpose.

22 Sec. 4. Section 25-2503, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 25-2503 Any agency which proposes to ~~acquire~~condemn
25 private property for a public purpose shall ~~give~~mail written notice

1 of such proposed ~~acquisition~~condemnation at least forty-five days
2 before ~~beginning negotiations for such acquisition.~~scheduling an
3 agency vote or other action of full and final approval, as described
4 in section 7 of this act, for such condemnation. The notice shall be
5 directed to each owner of property over or across which any right or
6 interest is to be ~~acquired~~condemned and shall be deemed properly
7 given if ~~delivered personally or mailed by registered or certified~~
8 first-class mail addressed to the property owner and to the address
9 shown on the tax records in the office of the county treasurer,
10 except that such notice shall be sufficient if ~~given~~mailed to the
11 administrator or executor of the estate of a deceased person, the
12 trustee of a trust estate, the guardian of the estate of a minor or
13 incompetent person, or a conservator. The notice shall (1) describe
14 the property proposed to be ~~acquired~~condemned and the compensation
15 to be given for such property, (2) include a statement of the
16 authority for the ~~acquisition,~~condemnation, (3) include the nature
17 of and necessity and public purpose for which the land shall be used,
18 (4) include the title, right, or interest in the property to be
19 ~~acquired,~~condemned, (5) specify the amount of property needed for
20 the public purpose, (6) include the reasons for selecting the
21 proposed location or route, ~~and~~(7) state that if approval of any
22 other agency is required, the condemner shall set forth which other
23 agency's approval shall be necessary and, when the ~~acquisition~~
24 condemnation involves a highway, power line, telephone line, utility,
25 or similar infrastructure project, shall include a map and plat

1 ~~showing the proposed route to be followed by the project.~~ permanent
2 and, when applicable, temporary route, right-of-way, or easement to
3 be utilized by a public purpose project, (8) a description of the
4 rights of the property owner, including the right to retain counsel
5 for negotiation of compensation and the proper county, municipal, or
6 state authority in which to file an appeal against proposed public
7 purpose project, and (9) include the projected date on which
8 construction of a public purpose project will commence, which shall
9 not be more than eighteen months following full and final approval,
10 as described in section 7 of this act.

11 Sec. 5. Section 25-2504, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 25-2504 After ~~giving mailing~~ notice pursuant to section
14 25-2503, the agency shall hold a public hearing on the proposed
15 public project and acquisition—condemnation at least thirty days
16 before ~~beginning negotiations for such acquisition.~~ scheduling an
17 agency vote or other action of full and final approval, as described
18 in section 7 of this act, for such condemnation. Notice of such
19 public hearing shall be published at least ten days prior to such
20 hearing in a legal newspaper published in and of general circulation
21 in each county, if such a newspaper exists, or if no such newspaper
22 is published in the county, notice shall be published in a newspaper
23 which has been designated as the official legal notice publication by
24 the county board and is of general circulation in the county or
25 counties in which the hearing is to be held. When the proposed

1 ~~acquisition~~ condemnation consists of property from more than one
2 county, a hearing shall be held in the county seat of each county.
3 When the proposed ~~acquisition~~ condemnation is countywide in scope,
4 the hearing shall be held at the county seat. When the proposed
5 ~~acquisition~~ condemnation involves a lesser area, the hearing shall be
6 held in a location convenient to the property to be ~~acquired~~
7 condemned. When the proposed ~~acquisition~~ condemnation involves
8 property located outside this state, the hearing shall be held at the
9 principal office of the agency.

10 At the hearing, the agency shall explain the nature of
11 and necessity for the project for which it seeks to ~~acquire~~ condemn
12 property, the reasons for selecting the particular location or route,
13 the right of each owner of property to be represented by an attorney
14 and to negotiate and accept or reject the offer of damages which will
15 be sustained by the proposed ~~acquisition~~ condemnation, and the right
16 to require that such damages be determined pursuant to the procedures
17 for ~~acquisition~~ condemnation by eminent domain. The agency shall hear
18 and consider any objections from any person and shall make available
19 all documents relating to the proposed condemnation that are public
20 records open to the public under sections 84-712 to 84-712.09.

21 If the agency relocates the proposed project following
22 such hearing and such relocation would require the ~~acquisition~~
23 condemnation of rights or interests in the property of more than ten
24 additional owners of separately owned tracts to whom notice was not
25 previously given, the agency shall give notice as provided in section

1 25-2503 to such additional owners and shall hold a public hearing as
2 provided in this section with reference solely to that part of the
3 project which has been relocated, except ; ~~Provided~~, that the time
4 restrictions in section 25-2503 and this section shall not be
5 applicable to any such additional notice, or hearing., ~~or~~
6 ~~negotiations.~~

7 Sec. 6. Section 25-2505, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 25-2505 Any agency acquiring property on a willing buyer-
10 willing seller basis or by gift, devise, or any other form of
11 voluntary transfer shall not be required to give the notice set forth
12 in section 25-2503 if such agency has no planned project involving
13 ~~acquisition~~ condemnation of the specific property, or any part
14 thereof, through the use of eminent domain or the agency has no
15 authority to use eminent domain for ~~acquisition~~ condemnation of
16 property, but such agency shall hold a public hearing at least thirty
17 days prior to consummation of the transaction whereby such property
18 is acquired by voluntary transfer which public hearing and public
19 notice of the same shall comply, where applicable, with section
20 25-2504. A school district may conduct any hearing required by this
21 section as a part of the agenda at a regular or special meeting of
22 its school board or board of education at the board's usual meeting
23 place or at such other location within the school district as the
24 board may designate.

25 Sec. 7. Prior to exercising the right of eminent domain

1 under sections 76-704 to 76-724, the agency shall have full and final
2 approval for the public purpose project by (1) an affirmative agency
3 majority vote or other agency action of approval or (2) having
4 applied for and been granted any controlling federal or state order,
5 permit, or authority, for a new public purpose project or the
6 extension of an existing public purpose project.

7 Sec. 8. No agency shall, by itself or in cooperation with
8 one or more persons or agencies, (1) intimidate, deceive, beguile,
9 mislead, or impersonate any other person or entity by falsely
10 presenting, portraying, or claiming the right to execute, commence,
11 initiate, employ, wield, or use any power of eminent domain prior to
12 full and final approval, as described in section 7 of this act, for a
13 public purpose project or (2) cause, direct, authorize, or permit
14 another under the direction of such company, corporation, or
15 association or persons cooperating with such entities to intimidate,
16 deceive, beguile, mislead, or impersonate any other person or entity
17 by falsely presenting, portraying, or claiming the right to execute,
18 commence, initiate, employ, wield, or use any power of eminent domain
19 prior to full and final approval, as described in section 7 of this
20 act, for a public purpose project.

21 Sec. 9. Claiming to have the authority to exercise
22 eminent domain rights under sections 76-704 to 76-724 for a specific
23 public purpose project prior to having been granted full and final
24 approval, as described in section 7 of this act, for the public
25 purpose project shall be a Class IV misdemeanor per occurrence.

1 Sec. 10. When two or more agencies have full and final
2 approval, as described in section 7 of this act, of an interest in
3 one or more parcels of private property, the legal rights thereto
4 shall be determined in the county court where the greatest parcel of
5 land exists for the public purpose project. There shall be no
6 authority to exercise eminent domain under sections 76-704 to 76-724
7 until a final determination of legal rights has been made by the
8 county court.

9 Sec. 11. In the event of an emergency for a new or
10 extension of an existing public purpose project, the agency shall
11 provide property owners notice requirements pursuant to section
12 25-2503 not less than fourteen days prior to having full and final
13 approval, as described in section 7 of this act, when such public
14 purpose project does not exceed ten or more property tracts.

15 Sec. 12. Section 25-2506, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 25-2506 Sections 25-2501 to 25-2506 and sections 7 to 11
18 of this act shall be construed to be cumulative and independent
19 legislation and complete in themselves.

20 Sec. 13. Section 76-704, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 76-704 ~~if~~ Except as provided in section 10 of this act,
23 if any condemnee shall fail to agree with the condemner with respect
24 to the acquisition of property sought by the condemner, a petition to
25 condemn the property may be filed by the condemner in the county

1 court of the county where the property or some part thereof is
2 situated.

3 Sec. 14. This act becomes operative on January 1, 2013.

4 Sec. 15. Original sections 25-2501, 25-2502, 25-2503,
5 25-2504, 25-2505, 25-2506, and 76-704, Reissue Revised Statutes of
6 Nebraska, and section 2-3234.07, Revised Statutes Cumulative
7 Supplement, 2010, are repealed.