

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 580

Introduced by Johnson, 23; Karpisek, 32; Scheer, 19; Schumacher, 22.
Read first time January 23, 2013

Committee: Judiciary

A BILL

1 FOR AN ACT relating to eminent domain; to amend sections 57-601,
2 76-701, 76-705, 76-706, 76-707, 76-711, 76-715, 76-716,
3 76-717, 76-718, 76-719, 76-719.01, 76-720, 76-723, and
4 76-726, Reissue Revised Statutes of Nebraska; to change
5 certain condemnation procedures; to harmonize provisions;
6 and to repeal the original sections.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 57-601, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 57-601 ~~As used in~~ For purposes of sections 57-601 to
4 57-607, unless the context otherwise requires:

5 (1) Eminent domain statutes ~~shall mean~~ means sections
6 76-701 to 76-724;

7 (2) Underground reservoir ~~shall mean~~ means any subsurface
8 sand, stratum, or formation suitable for the injection and storage of
9 natural gas or liquefied petroleum gas or both therein or which is
10 capable of being made suitable for the storage of natural gas or
11 liquefied petroleum gas, or both, by the construction of underground
12 caverns by means of mining operations and the withdrawal of natural
13 gas or liquefied gas therefrom;

14 (3) Underground storage ~~shall mean~~ means the right to
15 inject and store natural gas or liquefied petroleum gas or both
16 within and to withdraw natural gas or liquefied petroleum gas from an
17 underground reservoir;

18 (4) Natural gas ~~shall mean~~ means gas which has been
19 produced from the earth in its original state or such gas after the
20 same has been processed or treated;

21 (5) Native gas ~~shall mean~~ means gas which has not been
22 previously withdrawn from the earth;

23 (6) Liquefied petroleum gas ~~shall mean~~ means hydrocarbons
24 or mixtures thereof which have been extracted from natural gas or
25 crude oil and which consist primarily of propane or butane or

1 mixtures thereof;

2 (7) Condemner ~~shall mean~~ means any person, partnership,
3 limited liability company, corporation, association, or municipal
4 corporation authorized to transport or distribute natural gas as a
5 public utility within this state for ultimate public use or
6 consumption;

7 (8) Condemnee, ~~and property, and county judge shall~~ have
8 the same meaning as in ~~the eminent domain statutes;~~ section 76-701;

9 (9) Public owner ~~shall mean~~ means (a) the state, (b) any
10 agency or political subdivision thereof, (c) any municipal
11 corporation, (d) any quasi-municipal corporation, or (e) any public
12 authority which has an interest in any of the lands in and under
13 which a condemner requires the right to underground storage;

14 (10) Commercially recoverable native gas ~~shall mean~~ means
15 that native gas which would provide revenue in excess of direct
16 operating expenses if produced;

17 (11) Reasonable notice ~~shall mean~~ means notice served in
18 the same manner as is provided in the code of civil procedure for the
19 service of process in civil actions in the district courts of this
20 state; and

21 (12) Interested parties ~~shall mean~~ means the owners of
22 any oil or gas leasehold, mineral, or royalty interest in the
23 underground stratum or formation sought to be acquired and the owners
24 of the surface rights to the underground stratum or formation.

25 Sec. 2. Section 76-701, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 76-701 For purposes of sections 76-701 to 76-726:

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

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

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

15 ~~(4) County judge means the county judge of the county~~
16 ~~where condemnation proceedings provided by such sections are had.~~

17 Sec. 3. Section 76-705, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 76-705 If any condemner shall have taken or damaged
20 property for public use without instituting condemnation proceedings,
21 the condemnee, in addition to any other available remedy, may file,
22 within three years from the date of the taking, a petition with the
23 ~~county judge~~ district court of the county where the property or some
24 part thereof is situated to have the damages and taking ascertained
25 and determined. An appeal of the district court's decision shall be

1 to the Court of Appeals.

2 Sec. 4. Section 76-706, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 76-706 Upon filing of a petition under ~~either~~ section
5 76-704, ~~or 76-705~~, the county ~~judge~~ court or clerk magistrate, within
6 three days by order entered of record, shall appoint three
7 disinterested freeholders of the county, not interested in a like
8 question, to serve as appraisers. One appraiser so appointed shall be
9 a credentialed real property appraiser, except that if the county
10 ~~judge~~ court finds that no credentialed real property appraiser is a
11 disinterested freeholder of the county, this requirement shall not
12 apply. The county ~~judge~~ court or clerk magistrate shall direct the
13 sheriff to summon the appraisers so selected to convene at the office
14 of the county ~~judge~~ court at a time specified in the summons for the
15 purpose of qualifying as appraisers and thereafter proceed to
16 appraise the property or properties sought to be condemned and to
17 ascertain and determine the damages sustained by the condemnee.
18 Notice of intention to acquire the property and of the time and place
19 of meeting of the board of appraisers to have the damages assessed
20 shall be served upon the condemnee at least ten days prior to the
21 meeting of the board of appraisers. Service of such notice shall be
22 made in the manner provided for service of a summons in a civil
23 action.

24 Sec. 5. Section 76-707, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 76-707 Upon convening of the appraisers, the county ~~judge~~
2 court shall interrogate the appraisers as to their qualifications and
3 may excuse any appraiser found by the county ~~judge~~court to be
4 disqualified to serve. The county ~~judge~~court may fill any vacancies
5 arising through disqualification, inability to attend, or otherwise.

6 Sec. 6. Section 76-711, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 76-711 The condemner shall not acquire any interest in or
9 right to possession of the property condemned until he or she has
10 deposited with the court for the use of the condemnee the amount of
11 the condemnation award in effect at the time the deposit is made. The
12 condemner shall have sixty days from the date of the award of the
13 appraisers to deposit with the court the amount of the award or the
14 proceeding will be considered as abandoned. When the amount of the
15 award is deposited with the court by the condemner, the condemner
16 shall be deemed to have accepted the award unless he or she gives
17 notice of appeal from the award of the appraisers pursuant to section
18 76-715. If the proceeding is abandoned, proceedings may not again be
19 instituted by the condemner to condemn the property within two years
20 from the date of abandonment.

21 If an appeal regarding a petition filed under section
22 76-704 is taken from the award of the appraisers by the condemnee and
23 the condemnee obtains a greater amount than that allowed by the
24 appraisers or offer of judgment or if an appeal regarding a petition
25 filed under section 76-705 is taken by the condemnee and the

1 condemnee obtains a greater amount than that allowed by the district
2 court, the condemnee shall be entitled to interest from the date of
3 the deposit or entry of judgment at the rate provided in section
4 45-104.02, as such rate may from time to time be adjusted, compounded
5 annually, on the amount finally allowed, less interest at the same
6 rate on the amount withdrawn or on the amount which the condemner
7 offers to stipulate for withdrawal as provided by section 76-719.01.
8 If an appeal is taken ~~from the award of the appraisers~~ by the
9 condemner, the condemnee shall be entitled to interest from the date
10 of deposit or entry of judgment at the rate provided in section
11 45-104.02, as such rate may from time to time be adjusted, compounded
12 annually, on the amount finally allowed, less interest at the same
13 rate on the amount withdrawn or on the amount which the condemner
14 offers to stipulate for withdrawal as agreed to by the condemnee as
15 provided by section 76-719.01.

16 Upon deposit of the condemnation award with the court,
17 the condemner shall be entitled to a writ of assistance to place him
18 or her in possession of the property condemned and the condemnee
19 shall be liable for diminution in the value of the property caused by
20 the condemnee's purposeful removal of real or personal property not
21 previously agreed to in writing by the condemner and condemnee from
22 the condemned property.

23 Sec. 7. Section 76-715, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 76-715 ~~Either~~ In an appeal taken regarding a petition

1 filed under section 76-704, either condemner or condemnee may appeal
2 from the assessment of damages by the appraisers to the district
3 court of the county where the petition to initiate proceedings was
4 filed. Such appeal shall be taken by filing a notice of appeal with
5 the county ~~judge~~court within thirty days from the date of filing of
6 the report of appraisers as provided in section 76-710.

7 Sec. 8. Section 76-716, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 76-716 The party appealing shall also, at the time of
10 filing of notice of appeal, enter into an undertaking, with at least
11 one good and sufficient surety, to be approved by the ~~county judge~~
12 court conditioned (1) that the appellant will prosecute such appeal
13 to effect without unnecessary delays, and (2) that if judgment be
14 rendered against appellant on the appeal, the appellant will satisfy
15 whatever judgment may be rendered against him or her.

16 Sec. 9. Section 76-717, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 76-717 Within thirty days after the filing of such notice
19 of appeal, the ~~county judge~~court shall prepare and transmit to the
20 clerk of the district court or Court of Appeals a duly certified
21 transcript of all proceedings had concerning the parcel or parcels of
22 land as to which the particular condemnee takes the appeal upon
23 payment of the fees provided by law for preparation thereof. When
24 notice of appeal is filed by both the condemner and the condemnee,
25 such transcript shall be prepared only in response to the first

1 notice of appeal. The transcript prepared in response to the second
2 notice of appeal shall contain only a copy of such notice and the
3 proceedings shall be docketed in the district court or Court of
4 Appeals as a single cause of action.

5 The filing of the notice of appeal shall confer
6 jurisdiction on the district court or Court of Appeals. The first
7 party to perfect an appeal shall file a petition on appeal in the
8 district court or Court of Appeals within fifty days after the filing
9 of the notice of appeal. If no petition is filed, the court shall
10 direct the first party to perfect an appeal to file a petition and
11 impose such sanctions as are reasonable. The appeal shall be tried de
12 novo in the district court or Court of Appeals. Such appeal shall not
13 delay the acquisition of the property and placing of same to a public
14 use if the condemner shall first deposit with the ~~county judge court~~
15 the amount assessed by the appraisers.

16 Sec. 10. Section 76-718, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 76-718 After entry of final judgment in the district
19 court on ~~the~~ an appeal taken regarding a petition filed under section
20 76-704, a certified copy thereof shall be prepared and transmitted by
21 the clerk of the district court to the county ~~judge~~ court.

22 Sec. 11. Section 76-719, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 76-719 Either condemner or condemnee may appeal from the
25 judgment of the district court to the Court of Appeals in the manner

1 provided by law for taking an appeal in a civil action. In case an
2 appeal is taken, ~~either to the district court or the Court of~~
3 ~~Appeals,~~ any money deposited by the condemner shall remain ~~in the~~
4 ~~hands of with~~ the county judge ~~court in case of a petition filed~~
5 pursuant to section 76-704, or with the district court in case of a
6 petition filed pursuant to section 76-705 until a final judgment is
7 rendered, except as provided in section 14-817, 14-2115, 15-842.01,
8 19-4901, or 76-719.01.

9 Sec. 12. Section 76-719.01, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 76-719.01 Upon stipulation of the parties in interest,
12 the ~~county judge court~~ shall order that the amount stipulated by the
13 parties of the money deposited by the condemner in the ~~county court~~
14 be paid forthwith for or on account of the damages the condemnee has
15 sustained or will sustain by the appropriation of the property to the
16 use of the condemner. When the money remaining on deposit after
17 stipulated payment to the condemnee is five thousand dollars or more,
18 the ~~county court~~ shall place such amount in a savings account of a
19 bank or other financial institution or in interest-bearing
20 obligations of the federal government. The condemner may submit to
21 the court any preferences or suggestions it may have as to the manner
22 and place of such deposit. The amount so deposited shall be insured
23 by the Federal Deposit Insurance Corporation or other federally
24 chartered or guaranteed form of deposit insurance. The risk of loss
25 of any funds so deposited shall be on the condemner. Interest

1 accruing from such deposited funds shall be paid to the condemner.

2 If all the parties in interest waive the right of appeal,
3 the ~~county judge court~~ shall distribute the money deposited by the
4 condemner forthwith in accordance with the award of the appraisers
5 and as soon as deposited by the condemner. If the compensation
6 finally awarded in respect to the property is less than the amount of
7 the money so received by the condemnee, the court shall enter
8 judgment against the condemnee for the amount that the condemnee has
9 been overpaid, together with interest at the rate provided in section
10 45-104.02, as such rate may from time to time be adjusted, compounded
11 annually from the date of withdrawal.

12 Sec. 13. Section 76-720, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 76-720 If, regarding a petition filed pursuant to section
15 76-704, an appeal is taken from the award of the appraisers by the
16 condemnee and the amount of the final judgment is greater by fifteen
17 percent than the amount of the award or an offer of judgment before
18 trial, or if appeal is taken by the condemner and the amount of the
19 final judgment is not less than eighty-five percent of the award, or
20 if appeal is taken by both parties and the final judgment is greater
21 in any amount than the award or an offer of judgment before trial,
22 the court may in its discretion award to the condemnee a reasonable
23 sum for the fees of his or her attorney and for fees necessarily
24 incurred for not more than two expert witnesses. On any appeal by the
25 condemner, the condemner shall pay all court costs on appeal. If

1 appeal is taken by the condemnee only and the final judgment is not
2 equal to or greater than the award of the appraisers or an offer of
3 judgment before trial, the court may in its discretion award to the
4 condemner the court costs incurred by the condemner, but not attorney
5 or expert witness fees.

6 If an appeal is taken to the district court and the
7 district court finds that the condemner did not negotiate in good
8 faith with the property owner or there was no public purpose for
9 taking the property involved, the court shall award to the condemnee
10 a reasonable sum for the fees of his or her attorney and the
11 condemner shall pay all court costs on appeal.

12 The changes made to this section by Laws 1995, LB 222,
13 apply to any action pending on March 30, 1995, or filed on or after
14 such date.

15 Sec. 14. Section 76-723, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 76-723 The appraisers shall each receive a reasonable fee
18 for their services, to be fixed by the county ~~judge~~court or clerk
19 magistrate, and the same shall be taxed as costs. The fee shall not
20 exceed four hundred twenty-five dollars for each appraiser exclusive
21 of mileage for each day actually employed in attendance on the board
22 of appraisers. The condemner may appeal from the allowance of any fee
23 so fixed to the district court. Such an appeal shall be docketed
24 apart from and shall be considered separately and independently from
25 the rights between the condemnee and condemner. All costs of the

1 first appraisal shall be paid by the condemner. In addition, the
2 appraiser shall receive mileage at the rate provided in section
3 81-1176 for each mile necessarily traveled.

4 Sec. 15. Section 76-726, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 76-726 (1) The court having jurisdiction of a proceeding
7 instituted by an agency as defined in section 76-1217 to acquire real
8 property by condemnation shall award the owner of any right, title,
9 or interest in such real property such sum as will, in the opinion of
10 the court, reimburse such owner for his or her reasonable costs,
11 disbursements, and expenses, including reasonable attorney's,
12 appraisal, and engineering fees, actually incurred because of the
13 condemnation proceedings if (a) the final judgment is that the agency
14 cannot acquire the real property by condemnation or (b) the
15 proceeding is abandoned by the agency. If a settlement is effected,
16 the court may award to the plaintiff reasonable expenses, fees, and
17 costs.

18 (2) The court having jurisdiction of a proceeding
19 instituted by a condemnee under section 76-705 shall award the
20 condemnee such sum as will, in the opinion of the court, reimburse
21 the condemnee for his or her reasonable costs, disbursements, and
22 expenses, including reasonable attorney's, appraisal, and engineering
23 fees, actually incurred as a result of the taking of or damage to the
24 condemnee's property if (a) the court renders a judgment in favor of
25 the condemnee or (b) ~~a settlement is effected.~~ if there is an offer

1 of judgment served before trial on the condemnee, the court renders a
2 judgment in favor of the condemnee that is greater than fifteen
3 percent of the offer of judgment. If the condemnee fails to obtain a
4 judgment for more than was offered by the defendant, the condemnee
5 shall pay the condemnor's cost from the time of the offer. The court
6 may in its discretion award to the condemner reasonable attorney's
7 and appraisal fees if the court renders a judgment that a taking has
8 not occurred.

9 Sec. 16. Original sections 57-601, 76-701, 76-705,
10 76-706, 76-707, 76-711, 76-715, 76-716, 76-717, 76-718, 76-719,
11 76-719.01, 76-720, 76-723, and 76-726, Reissue Revised Statutes of
12 Nebraska, are repealed.