PROCEDURE UNDER EMINENT DOMAIN

Footnotes

This chapter not enacted as a part of this
title; transferred from chapter 472 in Code 1993

6B.1 Definitions.

1. As used in this chapter, unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2. For purposes of this chapter, an *"acquiring agency"* means the state of Iowa or any person or entity conferred the right by statute to condemn private property or to otherwise exercise the power of eminent domain. In the exercise of eminent domain power, the words *"applicant"* and *"condemner"* mean acquiring agency as defined in this subsection, unless the context clearly requires otherwise.

2000 Acts, ch 1148, §1; 2006 Acts, 1st Ex, ch 1001, §25, 47, 49

2006 amendment, transfer, and designation of former §6B.58 as subsection 2 in Code 2007, take effect July 14, 2006; 2006 Acts, 1st Ex, ch 1001, §47, 49

6B.1A Procedure provided.

The procedure for the condemnation of private property for works of internal improvement, and for other public projects, uses, or purposes, unless and except as otherwise provided by law, shall be in accordance with the provisions of this chapter. This chapter shall not apply to the dedication of property to an acquiring agency or to the voluntary negotiation and purchase of property by an acquiring agency.

[C24, 27, 31, 35, 39, § **7822;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 472.1]

C93, § 6B.1

2000 Acts, ch 1179, §1, 30

C2001, §6B.1A

6B.2 By whom conducted.

Such proceedings shall be conducted:

1. By the attorney general when the damages are payable from the state treasury.

2. By the county attorney, when the damages are payable from funds disbursed by the county, or by any township, or school corporation.

3. By the city attorney, when the damages are payable from funds disbursed by the city.

This section shall not be construed as prohibiting any other authorized representative from conducting such proceedings.

[C73, § 1271; C97, § 2024; S13, § 2024-a, -d, -f; C24, 27, 31, 35, 39, § **7823;** C46, 50, 54, 58, 62, 66, 71, 73,

75, 77, 79, 81, § 472.2]

C93, § 6B.2

6B.2A Notice of proposed public improvement.

1. An acquiring agency shall provide written notice of a public hearing to each owner and any contract purchaser of record of agricultural land that may be the subject of condemnation. The authority under this chapter is not conferred and condemnation proceedings shall not begin unless a good faith effort is made to mail and publish the notice as provided in this section on the owner and any contract purchaser of record of the property subject to condemnation. The notice shall be mailed by ordinary mail, not less than thirty days before the date the hearing is held, to the owner and any contract purchaser of record of each property or property interest at the owner's and contract purchaser's last known address as shown in the records of the county auditor not less than seven days nor more than fourteen days prior to the date of mailing. A change in ownership of any such property which is not reflected in the records of the county auditor during the period those records are searched as above provided shall not affect the validity of the notice or any condemnation proceeding commenced on the basis of such notice. The notice shall be given and the public hearing held before adoption of the ordinance, resolution, motion, or other declaration of intent to fund the final site-specific design for the public improvement, to make the final selection of the route or site location for the public improvement, or to acquire or condemn, if necessary, all or a portion of the property or an interest in the property for the public improvement. If the location of the public improvement is changed or expanded after the decision has been made to proceed with the public improvement, a notice shall be mailed by ordinary mail no less than thirty days before the adoption of the ordinance, resolution, motion, or other declaration of intent to proceed with a change in the location of the public improvement to the owner and any contract purchaser of record of the land to be acquired or condemned, if necessary, in the new location of the public improvement affected by the change. The mailed notice shall, at a minimum, include the following information:

a. The general nature of the public improvement.

b. A statement of the possibility that the acquiring agency may acquire part or all of the property or interest in the property by condemnation for the public improvement.

c. The process to be followed by the acquiring agency in making the decision to fund the final site-specific design for the public improvement, to make the final selection of the route or site location, or to acquire or condemn, if necessary, all or a portion of the property or an interest in the property for the public improvement.

d. The time and place of a public hearing at which an opportunity is provided for public input into the decision to fund the final site-specific design for the public improvement, to make the final selection of the route or site location, or to acquire or condemn, if necessary, all or a portion of the property or an interest in the property for the public improvement.

e. The name, address, and telephone number of the person designated by the acquiring agency as the person to contact regarding the public improvement.

f. A statement of rights of individual property owners with respect to the acquisition of their property and the availability of relocation benefits. The attorney general shall adopt by rule pursuant to chapter 17A a statement of rights which may be used in substantial form by any person required to provide the statement of rights as provided in this section.

2. The acquiring agency shall cause a notice to be published once in a newspaper of general circulation in the county or city where the agricultural land is located. The notice shall be published at least four but no more

than twenty days before the public hearing is held as referred to in subsection 1. The published notice shall, at a minimum, include the following information:

a. The general nature of the public improvement.

b. A statement of the possibility that the acquiring agency may acquire part or all of the property or an interest in the property by condemnation for the public improvement.

c. The process to be followed by the acquiring agency in making the decision to fund the final site-specific design for the public improvement, to make the final selection of the route or site location, or to acquire or condemn, if necessary, all or a portion of the property or an interest in the property for the public improvement.

d. The time and place of a public hearing at which an opportunity is provided for public input into the decision to fund the final site-specific design for the public improvement, to make the final selection of the route or site location, or to acquire or condemn, if necessary, all or a portion of the property or an interest in the property for the public improvement.

e. The name, address, and telephone number of the contact person regarding the public improvement.

3. If the acquiring agency is a person required to obtain a franchise under chapter 478, compliance with section 478.2 shall satisfy the requirements of this section. If the acquiring agency is a person required to obtain a permit under chapter 479, compliance with section 479.5 shall satisfy the requirements of this section.

4. This section shall not apply to a condemnation of property by the state department of transportation or a county for right-of-way that is contiguous to an existing road right-of-way and necessary for the maintenance, safety improvement, repair, or upgrade of the existing road. Notwithstanding section 6B.2C, a condemnation of property by the state department of transportation pursuant to this subsection shall be approved by the director of the department of transportation. For purposes of this subsection, *"upgrade"* means to bring a road or bridge up to currently acceptable standards, including improved geometrics, passing lanes, turning lanes, climbing lanes, and improved shoulders. *"Upgrade"* does not include expanding a highway from two lanes to four lanes.

5. The time deadlines in this section do not apply during the existence of an emergency requiring the construction or repair of public improvements in situations where failure to immediately construct or repair would result in immediate danger to public health, safety, or welfare. The notices required in this section shall be provided to the owner as soon as practicable.

99 Acts, ch 171, §2, 42; 2000 Acts, ch 1178, §1; 2000 Acts, ch 1179, §24, 30; 2002 Acts, ch 1063, §1

6B.2B Acquisition negotiation.

The acquiring agency shall make a good faith effort to negotiate with the owner to purchase the private property or property interest before filing an application for condemnation or otherwise proceeding with the condemnation process. An acquiring agency shall not make an offer to purchase the property or property interest that is less than the fair market value the acquiring agency has established for the property or property interest pursuant to the appraisal required in section 6B.45 or less than the value determined under the acquiring agency's waiver procedure established pursuant to section 6B.54, subsection 2, for acquisition of property with a low fair market value. A purchase offer made by an acquiring agency shall include provisions for payment to the owner of expenses, including relocation expenses, expenses listed in section 6B.54, subsection 10, and other expenses required by law to be paid by an acquiring agency to a condemnee. However, in the alternative, the acquiring agency may make, and the owner may accept, a purchase offer

from the acquiring agency that is an amount equal to one hundred thirty percent of the appraisal amount plus payment to the owner of expenses listed in section 6B.54, subsection 10, once those expenses have been determined. If the owner accepts such a purchase offer, the owner is barred from claiming payment from the acquiring agency for any other expenses allowed by law. An acquiring agency need not make an offer in excess of the amounts described in this section in order to satisfy the requirement to negotiate in good faith. 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.

99 Acts, ch 171, §3, 42; 2000 Acts, ch 1179, §5, 6, 30; 2006 Acts, 1st Ex, ch 1001, §6, 49

2006 amendments to this section are effective January 1, 2007; 2006 Acts, 1st Ex, ch 1001, §49

6B.2C Approval of the public improvement.

The authority to condemn is not conferred, and the condemnation proceedings shall not commence, unless the governing body for the acquiring agency approves the use of condemnation and there is a reasonable expectation the applicant will be able to achieve its public purpose, comply with all applicable standards, and obtain the necessary permits.

2000 Acts, ch 1179, §7, 30

6B.2D Notice of intent to approve acquisition of property by eminent domain.

1. The acquiring agency shall send notice of a proposed resolution, motion, or other document authorizing acquisition of property by eminent domain to each property owner whose property is proposed to be acquired by eminent domain, to any contract purchaser of record of the property, and to any tenant known to be occupying the property at least fourteen days prior to the date of the meeting at which such proposed authorization will be considered for adoption by the acquiring agency. The notice shall include the date, time, and place of the meeting and a statement that the persons receiving the notice have a right to attend the meeting and to voice objection to the proposed acquisition of the property. The notice shall include a copy of the proposed resolution, motion, or other document authorizing acquisition by eminent domain. The notice shall also include the same statement of individual rights that is required by section 6B.2A.

2. This section shall not apply to the following:

a. Street and highway projects undertaken by the state, a county, or a city.

b. Projects undertaken by a municipal utility.

c. Projects undertaken by a city enterprise providing services of sewer systems, storm water drainage systems, sewage treatment, solid waste collection, or solid waste disposal.

d. Projects undertaken by a county enterprise providing services described in section 331.461, subsection 2, paragraphs *"b"* and *"f"*.

2006 Acts, 1st Ex, ch 1001, §7, 49

Section is effective January 1, 2007; 2006 Acts, 1st Ex, ch 1001, §49

6B.3 Application recording notice time for appraisement new proceedings.

1. The proceedings shall be instituted by a written application filed with the chief judge of the judicial district of the county in which the land sought to be condemned is located. The application shall set forth:

a. A description of all the property in the county affected or sought to be condemned, by its congressional numbers, in tracts not exceeding one-sixteenth of a section, or, if the land consists of lots, by the numbers of the lot and block, and plat designation.

b. A plat showing the location of the right-of-way or other property sought to be condemned with reference to such description.

c. The names of all record owners of the different tracts of land sought to be condemned, or otherwise affected by such proceedings, and of all record holders of liens and encumbrances on such lands; also the place of residence of all such persons so far as known to the applicant.

d. The purpose for which condemnation is sought.

e. A request for the appointment of a commission to appraise the damages.

f. If the damages are to be paid by the state and the land to be condemned is within an agricultural area as provided in chapter 352, a statement disclosing whether any of that land is classified as class I or class II land under the United States department of agriculture natural resources conservation service land capability classification system contained in the agriculture handbook number 210, 1961 edition and, if so classified, stating that the class I or class II land is reasonably necessary for the work of internal improvement for which condemnation is sought.

g. A showing of the minimum amount of land necessary to achieve the public purpose and the amount of land to be acquired by condemnation for the public improvement. Any land to be acquired by condemnation beyond the necessary minimum to complete the project shall be presumed not to be necessary for a public use or public purpose unless the applicant can show that a substantial need exists for the additional property to achieve the public use or public purpose, or that the land in question constitutes an uneconomical remnant that has little or no value or utility to the owner, or that the owner consents to the condemnation.

h. A statement indicating the efforts made by the applicant to negotiate in good faith with the owner to acquire the private property sought to be condemned.

2. The applicant shall mail a copy of the application by certified mail to the owner at the owner's last known address, to any contract purchaser of record of the property, to any tenant known to be occupying the property, and to any record lienholder or encumbrancer of the property at the lienholder's or encumbrancer's last known address. The applicant shall also cause the application to be published once in a newspaper of general circulation in the county, not less than four nor more than twenty days before the meeting of the compensation commission to assess the damages. Service of the application by publication shall be deemed complete on the day of publication.

In lieu of mailing and publishing the application, the applicant may cause the application to be served upon the owner, contract purchaser of record, tenant known to be occupying the property, record lienholders, and record encumbrancers of the property in the manner provided by the Iowa rules of civil procedure for the personal service of original notice. The application shall be mailed and published or served, as above provided, prior to or contemporaneously with the mailing and publication or service of the list of compensation commissioners as provided in section 6B.4.

3. The applicant shall promptly certify that its application for condemnation has been approved by the chief judge and shall file the original approved application with the county recorder in the manner required under section 6B.37. The county recorder shall file and index the application in the record of deeds and preserve the application as required by sections 6B.38 and 558.55. The filing and indexing constitute constructive notice to all parties that a proceeding to condemn the property is pending and that the applicant has the right to acquire the property from all owners, lienholders, and encumbrancers whose interests are of record at the

time of the filing. After filing and indexing, the county recorder shall file a copy of the application with the office of secretary of state.

When indexed, the proceeding is considered pending so as to charge all persons not having an interest in the property with notice of its pendency, and while pending no interest can be acquired by the third parties in the property against the rights of the applicant. If the appraisement of damages by the commission pursuant to section 6B.14 is not made within one hundred twenty days of indexing, the proceedings instituted under this section are terminated and all rights and interests of the applicant arising out of the application for condemnation terminate. The applicant may reinstitute a new condemnation proceeding at any time. The reinstituted proceedings are entirely new proceedings and not a revival of the terminated proceeding.

[R60, § 1230; C73, § 1247; C97, § 2002; C24, 27, 31, 35, 39, § **7824;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 472.3; 82 Acts, ch 1245, § 19]

84 Acts, ch 1065, § 1, 2

C93, § 6B.3

95 Acts, ch 216, § 25; 99 Acts, ch 171, §4, 42; 2000 Acts, ch 1179, §8, 9, 30; 2006 Acts, 1st Ex, ch 1001, §810, 49

Footnotes

Manner of service, R.C.P. 1.3021.315

2006 amendments to this section take effect July 14, 2006;
2006 amendments to subsection 1, paragraph d, and subsection 2
apply to applications for condemnation filed on or after July 14,
2006; 2006 Acts, 1st Ex, ch 1001, §49

6B.3A Challenge by owner.

An owner of property described in an application for condemnation may bring an action 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 section 6A.24.

2006 Acts, 1st Ex, ch 1001, §11, 49

Section is effective July 14, 2006, and applies to applications for condemnation filed pursuant to §6B.3 on or after that date; 2006 Acts, 1st Ex, ch 1001, §49

6B.4 Commission to assess damages.

Annually the board of supervisors of a county shall appoint not less than twenty-eight residents of the county and the names of such persons shall be placed on a list and they shall be eligible to serve as members of a compensation commission. One-fourth of the persons appointed shall be owner-operators of agricultural property, one-fourth of the persons appointed shall be owners of city property, one-fourth shall be licensed real estate salespersons or real estate brokers, and one-fourth shall be persons having knowledge of property values in the county by reason of their occupation, such as bankers, auctioneers, property managers, property appraisers, and persons responsible for making loans on property.

The chief judge of the judicial district or the chief judge's designee shall select by lot six persons from the

list, two persons who are owner-operators of agricultural property when the property to be condemned is agricultural property; two persons who are owners of city property when the property to be condemned is other than agricultural property; and two persons from each of the remaining two representative groups, who shall constitute a compensation commission to assess the damages to all property to be taken by the applicant and located in the county, and shall name a chairperson from the persons selected. The chief judge or the judge's designee may appoint such alternate members and chairpersons to the commission as are deemed necessary and appropriate under the circumstances. A person shall not be selected as a member or alternate member of the compensation commission if the person possesses any interest in the proceeding which would cause the person to render a biased decision. The applicant shall mail a copy of the list of commissioners and alternates appointed by the chief judge by certified mail to the property owner at the owner's last known address. The applicant shall also cause the list of commissioners and alternates to be published once in a newspaper of general circulation in the county, not less than four nor more than twenty days before the meeting of the compensation commission to assess the damages. Service of the list of commissioners and alternates by publication shall be deemed complete on the day of publication. In lieu of mailing and publishing the list of commissioners and alternates, the applicant may cause the list to be served upon the owner of the property in the manner provided by the Iowa rules of civil procedure for the personal service of original notice. The list of commissioners and alternates shall be mailed and published or served, as above provided, prior to or contemporaneously with service of the notice of assessment as provided in section 6B.8.

Written instructions for members of compensation commissions shall be prepared under the direction of the chief justice of the supreme court and distributed to the sheriff in each county. The sheriff shall transmit copies of the instructions to each member of a compensation commission, and such instructions shall be read aloud to each commission before it commences its duties.

[R60, § 1317, 1318; C73, § 1244, 1245; C97, § 1999, 2029; C24, 27, 31, 35, 39, § **7825;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 472.4]

C93, § 6B.4

99 Acts, ch 171, §5, 6, 42; 2000 Acts, ch 1032, §1; 2000 Acts, ch 1179, §10, 11, 30; 2006 Acts, 1st Ex, ch 1001, §47, 49

6B.4A Review of applications by compensation commission. Repealed by 2006 Acts, 1st Ex, ch 1001, § 48, 49.

6B.5 Challenges to commissioners filling vacancies on commission.

1. Persons appointed by the chief judge to serve on the compensation commission are excused from the commission if they are removed for cause, stricken by a challenge pursuant to this section, unavailable to serve on the commission, or fail to act in their capacity as commissioners.

2. The applicant may challenge one commissioner without stating cause and the person or persons representing the fee ownership interest in the property may challenge one commissioner without stating cause. A challenge to the appointment of a commissioner shall be filed, in writing, with the sheriff not less than seven days prior to the meeting of the compensation commission, and shall be mailed to the other party by ordinary mail on the day of filing. An alternate commissioner may not be challenged without cause. A challenge filed less than seven days prior to the meeting of the commission shall have no effect.

3. If a person is excused from the commission, the sheriff shall select and notify, not less than twenty-four hours prior to the meeting, the alternate commissioners appointed for that condemnation proceeding, to complete the membership of the commission. Alternate commissioners selected and notified shall have the

same qualifications as the person who is being replaced. If no alternates have been appointed, the chief judge of the judicial district shall appoint another person from the list, possessing the same qualifications as the person who is being replaced to complete the membership of the commission.

4. The sheriff shall notify alternate commissioners in the order directed by the chief judge, and the alternate commissioner first notified who is available to serve as a compensation commissioner shall serve in the place of the commissioner who was unable to serve or who was stricken from the panel.

5. If a person is excused from the commission, the applicant and the property owner may stipulate in writing to the selection and notification of a particular alternate having the same qualifications as the person who is being replaced, to complete the membership of the commission. Such stipulation shall be filed with the sheriff not less than seventy-two hours prior to the meeting of the commission.

[R60, § 1319; C73, § 1251; C97, § 2006; C24, 27, 31, 35, 39, § **7826;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 472.5]

C93, § 6B.5

2000 Acts, ch 1179, §12, 30

6B.6 Sheriff to coordinate meeting of commissioners and provide meeting place.

The sheriff of the county in which the property to be condemned is located shall coordinate the meeting of commissioners, shall arrange an appropriate meeting place for commissioners, shall assure that appointed commissioners receive the order of the court appointing them and directing their attendance at the meeting of commissioners, and shall report the unavailability or absence of appointed commissioners to the chief judge, to the applicant, and to the landowner.

2000 Acts, ch 1179, §13, 30

6B.7 Commissioners to qualify.

Before meeting to assess the damages for the taking, all commissioners shall qualify by filing with the sheriff a written oath that they will to the best of their ability faithfully and impartially assess damages and make a written report assessing the damages to the sheriff.

[C24, 27, 31, 35, 39, § **7828;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 472.7]

C93, § 6B.7

99 Acts, ch 171, §8, 42; 2000 Acts, ch 1179, §14, 30

6B.8 Notice of assessment.

The applicant, or the owner or any lienholder or encumbrancer of any land described in the application, may, at any time after the appointment of the commissioners, have the damages to the lands of any such owner assessed by giving the other party, if a resident of this state, thirty days' notice, in writing. The notice shall specify the day and the hour when the compensation commission will meet, view the premises, and assess the damages. The notice shall be personally served upon all necessary parties in the same manner provided by the Iowa rules of civil procedure for the personal service of original notice.

[R60, § 1318; C73, § 1245; C97, § 2000; C24, 27, 31, 35, 39, § **7829;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 472.8]

C93, § 6B.8

99 Acts, ch 171, §9, 42; 2000 Acts, ch 1179, §15, 30; 2006 Acts, 1st Ex, ch 1001, §12, 49

Footnotes

Manner of service, R.C.P. 1.3021.315

2006 amendments to this section take effect July 14, 2006, and apply to applications for condemnation filed pursuant to §6B.3 on or after that date; 2006 Acts, 1st Ex, ch 1001, §49

6B.9 Form of notice signature.

1. Said notice shall be in substantially the following form, with such changes therein as will render it applicable to the party giving and receiving the notice, and to the particular case pending, to wit:

To ..... (here name each person whose land is to be taken or affected and each record lienholder or encumbrancer thereof) and all other persons, companies, or corporations having any interest in or owning any of the following described real estate:

(Here describe the land as in the application.)

You are hereby notified that ..... (here enter the name of the applicant) desires the condemnation of the following described land: (Here describe the particular land or portion thereof sought to be condemned, in such manner that it will be clearly identified.)

That such condemnation is sought for the following purpose: (Here clearly specify the purpose.)

That a commission has been appointed as provided by law for the purpose of appraising the damages which will be caused by said condemnation.

That said commissioners will, on the ..... day of ..... (month), ... (year), at ..... o'clock ....m., view said premises and proceed to appraise said damages, at which time you may appear before the commissioners if you care to do so. ..... Applicant.

2. The notice may be signed by the applicant, by the applicant's attorney, or by any other authorized representative.

[R60, § 1320; C73, § 1247; C97, § 2002; C24, 27, 31, 35, 39, § **7830;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 472.9]

C93, § 6B.9

2000 Acts, ch 1058, §56; 2006 Acts, 1st Ex, ch 1001, §47, 49

6B.10 Signing of notice. Transferred to § 6B.9; 2006 Acts, 1st Ex, ch 1001, § 47, 49.

6B.11 Filing of notices and return of service.

Notices, immediately after the service thereof, shall, with proper return of service endorsed thereon or attached thereto, be filed with the sheriff. The sheriff shall at once cause the commissioners to be notified of

the day and hour when they will be required to proceed with the appraisement. The notice to the commissioners shall also be published by the sheriff pursuant to section 331.305.

[C24, 27, 31, 35, 39, § **7832;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 472.11]

C93, § 6B.11

99 Acts, ch 171, §10, 42

6B.12 Notice when residence unknown. Repealed by 2000 Acts, ch 1179, § 29, 30.

6B.13 Service outside state. Repealed by 2000 Acts, ch 1179, § 29, 30.

6B.14 Appraisement report.

1. The commissioners shall, at the time fixed in the aforesaid notices, view the land sought to be condemned and assess the damages which the owner will sustain by reason of the appropriation. The commission shall file its written report, signed by all commissioners, with the sheriff. At the request of the condemner or the condemnee, the commission shall divide the damages into parts to indicate the value of any dwelling, the value of the land and improvements other than a dwelling, and the value of any additional damages. The appraisement and return may be in parcels larger than forty acres belonging to one person and lying in one tract, unless the agent or attorney of the applicant, or the commissioners, have actual knowledge that the tract does not belong wholly to the person in whose name it appears of record; and in case of such knowledge, the appraisement shall be made of the different portions as they are known to be owned.

2. Prior to the meeting of the commission, the commission or a commissioner shall not communicate with the applicant, property owner, or tenant, or their agents, regarding the condemnation proceedings. The commissioners shall meet in open session to view the property and to receive evidence, but may deliberate in closed session. When deliberating in closed session, the meeting is closed to all persons who are not commissioners except for personnel from the sheriff's office if such personnel is requested by the commission. After deliberations commence, the commission and each commissioner is prohibited from communicating with any party to the proceeding. However, if the commission is deliberating in closed session, and after deliberations commence the commission requires further information from a party or a witness, the commission shall notify the property owner and the acquiring agency that they are allowed to attend the meeting at which such additional information shall be provided but only for that period of time during which the additional information is being provided. The property owner and the acquiring agency shall be given a reasonable opportunity to attend the meeting. The commission shall keep minutes of all its meetings showing the date, time, and place, the members present, and the action taken at each meeting. The minutes shall show the results of each vote taken and information sufficient to indicate the vote of each member present. The vote of each member present shall be made public at the open session. The minutes shall be public records open to public inspection.

3. In determining fair market value of property, the commissioners shall not consider only the assessed value assigned to such property for purposes of property taxation.

4. In assessing the damages the owner or tenant will sustain, the commissioners shall consider and make allowance for personal property which is damaged or destroyed or reduced in value.

5. An owner or tenant occupying land which is proposed to be acquired by condemnation shall be awarded a sum sufficient to remove such owner's or tenant's personal property from the land to be acquired, which sum shall represent reasonable costs of moving the personal property from the land to be acquired to a point no greater than fifty miles; but in any event, damages awarded under this section for moving shall not exceed five thousand dollars for each owner or tenant occupying land proposed to be condemned. An owner or

tenant may apply for an award pursuant to this section only if all other damages provided by law have been awarded and such amount awarded is insufficient to pay the owner's or tenant's reasonable costs of moving.

[C73, § 1249; C97, § 2004, 2029; C24, 27, 31, 35, 39, § **7835;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 472.14]

C93, § 6B.14

99 Acts, ch 171, §12, 42; 2000 Acts, ch 1179, §16, 17, 30; 2006 Acts, 1st Ex, ch 1001, §13, 14, 49; 2007 Acts, ch 22, §1

2006 amendment to subsection 2 takes effect January 1, 2007; 2006 enactment of subsection 3 takes effect July 14, 2006, and applies to applications for condemnation filed pursuant to §6B.3 on or after that date; 2006 Acts, 1st Ex, ch 1001, §49

6B.15 Guardianship.

In all cases where any interest in lands sought to be condemned is owned by a person who is under legal disability and has no guardian of the person's property, the applicant shall, prior to the filing of the application with the sheriff, apply to the district court for the appointment of a guardian of the property of such person.

[C24, 27, 31, 35, 39, § **7836;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 472.15]

C93, § 6B.15

6B.16 Power of guardian.

If the owner of any lands is under guardianship, such guardian may, under the direction of the district court, or judge thereof, agree and settle with the applicant for all damages resulting from the taking of such lands, and give valid conveyances thereof.

[R60, § 1316; C73, § 1246; C97, § 2001; C24, 27, 31, 35, 39, § **7837;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 472.16]

C93, § 6B.16

6B.17 When appraisement final.

The appraisement of damages returned by the commissioners shall be final unless appealed from.

[C24, 27, 31, 35, 39, § **7838;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 472.17]

C93, § 6B.17

6B.18 Notice of appraisement appeal of award notice of appeal.

1. After the appraisement of damages has been delivered to the sheriff by the compensation commission, the sheriff shall give written notice, by ordinary mail, to the condemner and the condemnee of the date on which the appraisement of damages was made, the amount of the appraisement, and that any interested party may, within thirty days from the date of mailing the notice of the appraisement of damages, appeal to the district

court by filing notice of appeal with the district court of the county in which the real estate is located and by giving written notice to the sheriff that the appeal has been taken. The sheriff shall endorse the date of mailing of notice upon the original appraisement of damages.

2. An appeal of appraisement of damages is deemed to be perfected upon filing of a notice of appeal with the district court within thirty days from the date of mailing the notice of appraisement of damages. The notice of appeal shall be served on the adverse party, or the adverse party's agent or attorney, and any lienholder and encumbrancer of the property in the same manner as an original notice within thirty days from the date of filing the notice of appeal unless, for good cause shown, the court grants more than thirty days. If after reasonable diligence, the notice cannot be personally served, the court may prescribe an alternative method of service consistent with due process of law.

3. In case of condemnation proceedings instituted by the state department of transportation, when the owner appeals from the assessment made, such notice of appeal shall be served upon the attorney general, or the department general counsel to the state department of transportation, or the chief highway engineer for the department.

4. When an appeal is taken, the sheriff shall at once file with the clerk of the district court a certified copy of as much of the assessment as applies to the part for which the appeal is taken.

[R60, § 1317; C73, § 1254; C97, § 2009; S13, § 2009; C24, 27, 31, 35, 39, § **7839;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 472.18]

C93, § 6B.18

2002 Acts, ch 1063, §2; 2003 Acts, ch 44, §1; 2006 Acts, 1st Ex, ch 1001, §47, 49

6B.19 Service of notice highway matters. Repealed by 2002 Acts, ch 1063, §15.

6B.20 Sheriff to file certified copy. Transferred to § 6B.18; 2006 Acts, 1st Ex, ch 1001, § 47, 49.

6B.21 Appeals how docketed and tried.

The appeal shall be docketed in the name of the person appealing and all other interested parties to the action shall be defendants. In the event the condemner and the condemnee appeal, the appeal shall be docketed in the name of the appellant which filed the application for condemnation and all other parties to the action shall be defendants. The appeal shall be tried as in an action by ordinary proceedings.

[R60, § 1317; C73, § 1254; C97, § 2009; S13, § 2009, 2024-h; C24, 27, 31, 35, 39, § **7841;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 472.21]

84 Acts, ch 1119, § 1

C93, § 6B.21

99 Acts, ch 171, §13, 42

6B.22 Pleadings on appeal.

A written petition shall be filed by the plaintiff within thirty days after perfection of the appeal, stating specifically the items of damage and the amount thereof. The court may for good cause shown grant additional time for the filing of the petition. The defendant shall file a written answer to plaintiff's petition, or such other pleadings as may be proper.

[C31, 35, § 7841-c1; C39, § **7841.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 472.22]

C93, § 6B.22

2002 Acts, ch 1063, §3

6B.23 Question determined.

On the trial of the appeal, no judgment shall be rendered except for costs and allocation of interest earned pursuant to section 6B.25, but the amount of damages shall be ascertained and entered of record.

[C73, § 1257; C97, § 2011; C24, 27, 31, 35, 39, § **7842;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 472.23]

C93, § 6B.23

2004 Acts, ch 1121, §1

6B.24 Reduction of damages interest on increased award.

If the amount of damages awarded by the commissioners is decreased on appeal, the reduced amount shall be paid to the landowner. If the amount of damages awarded by the commissioners is increased on appeal, interest shall be paid from the date of the condemnation. Interest shall not be paid on any amount which was previously paid. Interest shall be calculated at an annual rate equal to the treasury constant maturity index published by the federal reserve in the H15 Report settled immediately before the date of the award.

[C73, § 1259; C97, § 2013; C24, 27, 31, 35, 39, § **7843;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 472.24]

C93, § 6B.24

95 Acts, ch 135, § 1; 2002 Acts, ch 1063, §4

6B.25 Right to take possession of lands title damages award.

Upon the filing of the commissioners' report with the sheriff, the applicant may deposit with the sheriff the amount assessed in favor of a claimant, and the applicant, except as otherwise provided, may take possession of the land condemned and proceed with the improvement. An appeal from the assessment does not affect the right, except as otherwise provided. Prior to expiration of the time provided for appeal, the property owner may apply to the district court for release of that part of the damages deposited which the court finds proper. If there is not an appeal by any party, the property owner shall be entitled to the whole of the damages awarded. Upon appeal from the commissioners' award of damages, the district court may direct that the part of the amount of damages deposited with the sheriff, as it finds just and proper, be paid to the claimant. If upon trial of the appeal a lesser amount is awarded, the difference between the amount so awarded and the amount paid shall be repaid by the person to whom it was paid and upon failure to make the repayment the party shall have judgment entered against the person who received the excess payment. Title to the property or the interests in property passes to the applicant when damages have been finally determined and paid.

If an award of damages is appealed to district court, the amount deposited with the sheriff, if any, less the amount paid by the sheriff to the claimant, shall be transferred to the clerk of district court where the appeal was filed and the clerk shall deposit the money in an interest-bearing account. The district court in its judgment rendered pursuant to section 6B.23 shall award the interest earned on the account in proportion to the amount of damages ascertained and entered of record.

[R60, § 1317; C73, § 1244, 1255, 1256, 1272; C97, § 1999, 2010, 2025, 2029; S13, § 2024-e, -g, -h; C24, 27, 31, 35, 39, § **7844, 7847, 7848;** C46, 50, 54, 58, § 472.25, 472.28, 472.29; C62, 66, 71, 73, 75, 77, 79, 81, § 472.25]

84 Acts, ch 1065, § 4

C93, § 6B.25

2000 Acts, ch 1179, §18, 30; 2004 Acts, ch 1121, §2

6B.26 Dispossession of landowner or injury to property limitation.

1. A landowner shall not be dispossessed under condemnation proceedings of the landowner's residence, dwelling house, outbuildings if the residence or dwelling house is also acquired, orchard, or garden, until the damages thereto have been finally determined and paid. However, if the property described in this subsection is condemned for highway purposes by the state department of transportation, the condemning authority may take possession of the property either after the damages have been finally determined and paid or one hundred eighty days after the compensation commission has determined and filed its award, in which event all of the appraisement of damages shall be paid to the property owner before the dispossession can take place. This subsection shall not apply to condemnation proceedings for drainage or levee improvements, or for public school purposes. For the purposes of this subsection, *"outbuildings"* means structures and improvements located in proximity to the landowner's residence.

2. If it appears from the finding of the commissioners that the dwelling house, outhouse, orchard, or garden of the owner of any land taken will be overflowed or otherwise injuriously affected by any dam or reservoir to be constructed as authorized by this chapter, such dam shall not be erected until the question of such overflowing or other injury has been determined in favor of the corporation upon appeal.

[C24, 27, 31, 35, 39, § **7845;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 472.26]

C93, § 6B.26

99 Acts, ch 171, §14, 42; 2006 Acts, 1st Ex, ch 1001, §47, 49

6B.27 Erection of dam limitation. Transferred to § 6B.26; 2006 Acts, 1st Ex, ch 1001, § 47, 49.

6B.28 and 6B.29 Reserved.

6B.30 Additional deposit.

If, on the trial of the appeal, the damages awarded by the commissioners are increased, the condemner shall, if the condemner is already in possession of the property, make such additional deposit with the sheriff, as will, with the deposit already made, equal the entire damages allowed. If the condemner be not already in possession, the condemner shall deposit with the sheriff the entire damages awarded, before entering on, using, or controlling the premises.

[C73, § 1258; C97, § 2012; C24, 27, 31, 35, 39, § **7849;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 472.30]

C93, § 6B.30

6B.31 Payment by public authorities.

When damages, by reason of condemnation, are payable from public funds, the sheriff, or clerk of the district court, as the case may be, shall certify to the officer, board, or commission having power to audit claims for the purchase price of said lands, the amount legally payable to each claimant, and, separately, a detailed statement of the cost legally payable from such public funds. Said officer, board, or commission shall audit said claims, and the warrant-issuing officer shall issue warrants therefor on any funds appropriated therefor, or otherwise legally available for the payment of the same. Warrants shall be drawn in favor of each claimant to whom damages are payable. The warrant in payment of costs shall be issued in favor of the officer certifying thereto.

[C73, § 1272; C97, § 2025; S13, § 2024-b, -e, -g; C24, 27, 31, 35, 39, § **7850;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 472.31]

C93, § 6B.31

6B.32 Removal of condemner.

The sheriff, upon being furnished with a copy of the assessment as determined on appeal, certified to by the clerk of the district court, may remove from said premises the condemner and all persons acting for or under the condemner, unless the amount of the assessment is forthwith paid or deposited as hereinbefore provided.

[C73, § 1258; C97, § 2012; C24, 27, 31, 35, 39, § **7851;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 472.32]

C93, § 6B.32

6B.33 Costs and attorney fees.

The acquiring agency shall pay all costs of the assessment made by the commissioners and reasonable attorney fees and costs, including the reasonable cost of one appraisal, incurred by the condemnee as determined by the commissioners if the award of the commissioners exceeds one hundred ten percent of the final offer of the applicant prior to condemnation. The condemnee shall submit an application for fees and costs prior to adjournment of the final meeting of the compensation commission held on the matter. The acquiring agency shall file with the sheriff an affidavit setting forth the most recent offer made to the person whose property is sought to be condemned. Members of such commissions shall receive a per diem of two hundred dollars and actual and necessary expenses incurred in the performance of their official duties. The acquiring agency shall reimburse the county sheriff for the per diem and expense amounts paid by the sheriff to the members. The acquiring agency shall reimburse the owner for the expenses the owner incurred for recording fees, penalty costs for full or partial prepayment of any preexisting recorded mortgage entered into in good faith encumbering the property, and for similar expenses incidental to conveying the property to the acquiring agency. The acquiring agency shall also pay all costs occasioned by the appeal, including reasonable attorney fees and the reasonable cost incurred by the property owner for one appraisal to be taxed by the court, unless on the trial thereof the same or a lesser amount of damages is awarded than was allowed by the tribunal from which the appeal was taken.

[R60, § 1317; C73, § 1252; C97, § 2007; C24, 27, 31, 35, 39, § **7852;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 472.33]

C93, § 6B.33

99 Acts, ch 171, §15, 42; 2000 Acts, ch 1179, §19, 30; 2002 Acts, ch 1063, §5; 2006 Acts, 1st Ex, ch 1001, §15, 49

2006 amendments to this section take effect July 14, 2006, and apply to applications for condemnation filed

pursuant to §6B.3 and pending on that date if the appraisement report required under §6B.14 has not been filed with the sheriff; 2006 Acts, 1st Ex, ch 1001, §49

6B.34 Refusal to pay final award.

Should the applicant decline, at any time after an appeal is taken as provided in section 6B.18, to take the property and pay the damages awarded, the applicant shall pay, in addition to the costs and damages actually suffered by the landowner, reasonable attorney fees to be taxed by the court.

[C97, § 2011; C24, 27, 31, 35, 39, § **7853;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 472.34]

C93, § 6B.34

6B.35 Sheriff to file record.

Thirty days after the date of mailing the notice of appraisement of damages, the sheriff shall file with the county recorder of the county in which the condemned land is situated, the following papers:

1. A certified copy of the application for condemnation.

2. All notices, together with all returns of service endorsed on the returns or attached to the returns.

3. The report of the commissioners.

4. All other papers filed with the sheriff in the proceedings.

5. A written statement by the sheriff of all money received in payment of damages, from whom received, to whom paid, and the amount paid to each claimant and reference to the application for condemnation by document reference or instrument number and the date the application was filed with the county recorder.

[C73, § 1253; C97, § 2008; C24, 27, 31, 35, 39, § **7854;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 472.35]

84 Acts, ch 1065, § 5

C93, § 6B.35

2001 Acts, ch 44, §1

6B.36 Clerk to file record.

The clerk of the district court, in case an appeal is taken in condemnation proceedings, shall file with the county recorder:

1. A copy of the final judgment entry of the court showing the amount of damages determined on appeal.

2. A written statement by the clerk of all money received by the clerk in payment of damages, from whom received, to whom paid, and the amount paid to each claimant.

3. A copy of the description of the property condemned and the interest acquired in the property.

[C24, 27, 31, 35, 39, § **7855;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 472.36]

84 Acts, ch 1065, § 6

C93, § 6B.36

6B.37 Form of record certificate.

Said papers shall be securely fastened together, arranged in the order named above, and be accompanied by a certificate of the officer filing the papers that the papers are true and correct copies of the original files in the proceedings and that the statements accompanying the papers are true.

[C24, 27, 31, 35, 39, § **7856;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 472.37]

91 Acts, ch 116, §3

C93, § 6B.37

6B.38 Record of proceedings fee effect.

1. The county recorder shall record the papers, statements, and certificate in the record of deeds and properly index them. The recorder may return the recorded instrument to the sender or dispose of that instrument if the sender does not wish to have the instrument returned. A document filed in the recorder's office before July 1, 1990, may be returned to the sender or disposed of if the sender does not wish to have the document returned and if there is an official copy of that document in the recorder's office.

2. The county recorder shall file a copy of the sheriff's statement required by section 6B.35, subsection 5, with the office of the secretary of state.

3. The sheriff or clerk, as the case may be, shall collect from the condemner such fee as the county recorder would have legal right to demand for making such record, and pay such fee to the recorder upon presenting the papers for record.

4. The said original papers, statements, and certificate, or the record thereof shall be presumptive evidence of title in the condemner, and shall constitute constructive notice of the right of such condemner to the lands condemned.

[C73, § 1253; C97, § 2008; C24, 27, 31, 35, 39, § **7857;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 472.38]

90 Acts, ch 1021, §3; 91 Acts, ch 116, §4

C93, § 6B.38

99 Acts, ch 171, §16, 42; 2006 Acts, 1st Ex, ch 1001, §47, 49

Footnotes

Recorder fee, see §331.604

6B.39 Fee for recording. Transferred to § 6B.38; 2006 Acts, 1st Ex, ch 1001, § 47, 49.

6B.40 Failure to record liability.

Any sheriff, or clerk of the district court, as the case may be, who fails to present said papers, statements, and

certificate for record, and any recorder who fails to record the same as above provided shall be liable for all damages caused by such failure.

[C24, 27, 31, 35, 39, § **7859;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 472.40]

C93, § 6B.40

6B.41 Presumption. Transferred to § 6B.38; 2006 Acts, 1st Ex, ch 1001, § 47, 49.

6B.42 Eminent domain payment to displaced persons.

1. *a.* The acquiring agency shall provide to the person, in addition to any other sums of money in payment of just compensation, the payments and assistance required by law, in accordance with chapter 316, as if the acquiring agency were a displacing agency under that chapter.

b. A person aggrieved by a determination made as to eligibility for relocation assistance, a payment, or the amount of the payment, upon application, may have the matter reviewed by the appropriate acquiring agency.

c. An acquiring agency subject to this section that proposes to displace a person shall inform the person of the person's right to receive relocation assistance and payments, and of an aggrieved person's right to appeal a determination as to assistance and payments.

2. *a.* A utility or railroad subject to section 327C.2, or chapters 476, 478, 479, 479A, and 479B, authorized by law to acquire property by condemnation, which acquires the property of a person or displaces a person for a program or project which has received or will receive federal financial assistance as defined in section 316.1, shall provide to the person, in addition to any other sums of money in payment of just compensation, the payments and assistance required by law, in accordance with chapter 316.

b. A person aggrieved by a determination made by a utility as to eligibility for relocation assistance, a payment, or the amount of the payment, upon application, may have the matter reviewed by the utilities division of the department of commerce.

c. A person aggrieved by a determination made by a railroad as to eligibility for relocation assistance, a payment, or the amount of the payment, upon application, may have the matter reviewed by the state department of transportation.

d. A utility or railroad subject to this section that proposes to displace a person shall inform the person of the person's right to receive relocation assistance and payments, and of an aggrieved person's right to appeal to the utilities division of the department of commerce or the state department of transportation.

[C71, 73, 75, 77, 79, 81, § 472.42; 81 Acts, ch 22, § 21, 22]

89 Acts, ch 20, § 18

C93, § 6B.42

95 Acts, ch 192, § 1; 99 Acts, ch 171, §17, 42; 2006 Acts, 1st Ex, ch 1001, §16, 49

2006 amendment to subsection 1, paragraph a, takes effect July 14, 2006, and applies to applications for condemnation filed pursuant to §6B.3 on or after that date; 2006 Acts, 1st Ex, ch 1001, §49

6B.43 Chief justice to prepare instructions. Transferred to § 6B.4; 2006 Acts, 1st Ex, ch 1001, § 47, 49.

6B.44 Taking property for highway buildings and fences moved.

When real property or an interest therein is purchased or condemned for highway purposes and a fence or building is located on such property, the governmental agency shall be responsible for all costs incurred by the property owner in replacing or moving the fence or moving the building onto property owned by the landowner and abutting the property purchased or condemned for highway purposes, or the governmental agency may replace or move the fence or move the building. Such costs shall not constitute an additional element of damages which would permit unjust enrichment or a duplication of payments to any condemnee.

[C71, 73, 75, 77, 79, 81, § 472.44]

C93, § 6B.44

6B.45 Mailing copy of appraisal.

When any real property or interest in real property is to be purchased, or in lieu thereof to be condemned, the acquiring agency or its agent shall submit to the person, corporation, or entity whose property or interest in the property is to be taken, by ordinary mail, at least ten days prior to the date upon which the acquiring agency or its agent contacts the property owner to commence negotiations, a copy of the appraisal in its entirety upon such real property or interest in such real property prepared for the acquiring agency or its agent, which shall include, at a minimum, an itemization of the appraised value of the real property or interest in the property, any buildings on the property, all other improvements including fences, severance damages, and loss of access. In determining fair market value of property, the acquiring agency shall not consider only the assessed value assigned to such property for purposes of property taxation. The appraisal sent to the condemnee shall be that appraisal upon which the condemnor will rely to establish an amount which the condemnor believes to be just compensation for the real property. All other appraisals made on the property as a result of the condemnation proceeding shall be made available to the condemnee upon request. In lieu of an appraisal, a utility or person under the jurisdiction of the utilities board of the department of commerce, or any other utility conferred the right by statute to condemn private property, shall provide in writing by certified mail to the owner of record thirty days prior to negotiations, the methods and factors used in arriving at an offered price for voluntary easements including the range of cash amount of each component. An acquiring agency may obtain a signed written waiver from the landowner to allow negotiations to commence prior to the expiration of the applicable waiting period for the commencement of negotiations.

Only the appraisal prepared under this section shall be forwarded to the compensation commission by the acquiring agency.

[C71, 73, 75, 77, 79, 81, § 472.45]

C93, § 6B.45

99 Acts, ch 171, §18, 42; 2000 Acts, ch 1179, §20, 30; 2006 Acts, 1st Ex, ch 1001, §17, 49

2006 amendments to this section take effect July 14, 2006, and apply to applications for condemnation filed pursuant to §6B.3 on or after that date; 2006 Acts, 1st Ex, ch 1001, §49

6B.46 Special proceedings to condemn existing utility.

1. When any city has voted at an election to purchase, establish, erect, maintain and operate heating plants, waterworks, gasworks or electric light or power plants, or when it has voted to contract an indebtedness and issue bonds for such purposes, and in such city there exists any such utility, or incomplete parts thereof or more than one, not publicly owned, and the contract or franchise of the owner of the utility has expired or

been surrendered, and the owner and the city cannot agree upon terms of purchase, it may, by resolution, proceed to acquire by condemnation any one or more of the utilities or incomplete parts thereof. When so acquired it may apply the proceeds of the bonds in payment therefor and in making extensions and improvements to such works or plants so acquired, but not more than one utility may be so acquired when the municipality is indebted in excess of the statutory limitation of indebtedness for such purposes for any such acquired property.

2. Upon the passage of the resolution as provided in subsection 1 and the presentation of a certified copy thereof to the supreme court while in session, or to the chief justice of the supreme court, the court or chief justice shall within five days appoint as a court of condemnation three district court judges from three judicial districts, one of whom shall be from the district in which the city is located, if not a resident of the city, and shall enter an order requiring the judges to attend as such court of condemnation at the county seat of the county in which the city is located within ten days. The district court judges shall attend and constitute a court of condemnation.

3. Said court when it meets to organize or at any time during the proceedings, which may be adjourned from time to time for any purpose, may fix the time for the appearance of any person that any party desires to have joined in the proceedings, and whom the court deems necessary. The time for appearance shall be sufficiently remote to serve notice upon the parties, but if the time for appearance occurs after the proceedings are begun, the proceedings may be reviewed by the court to give all parties a full opportunity to be heard.

4. Persons not voluntarily appearing, but having any right, title, or interest in or to the property which is the subject of condemnation, or any part thereof, including all leaseholders, mortgagees and trustees of bondholders, who are to be made parties to the proceedings shall be served with notice of the proceedings and the time and place of meeting of the court in the same manner and for the same length of time as for the service of original notice, either by personal service, or by service by publication, the time so set being the time at which the parties so served are required to appear, and actual personal service of the notice within or without the state shall supersede the necessity for publication.

5. The court of condemnation shall have power to summon and swear witnesses, take evidence, order the taking of depositions, require the production of any books or papers, and may appoint a shorthand reporter. It shall perform all the duties of commissioners in the condemnation of property. The duties and the method of procedure and condemnation, including provisions for appeal shall be except as otherwise specifically provided, as provided for the taking of private property for works of internal improvement. The clerk of the district court of the county where the city is located shall perform all of the duties required of the sheriff in the condemnation; and in case of a vacancy in the court, the vacancy shall be filled in the manner in which the original appointment was made. When necessary by reason of a vacancy, the court may review any evidence in its record.

6. The costs of the proceedings shall be the same and paid in the same manner as in proceedings in the district court, and the district court judges of the court of condemnation shall receive, while engaged in such service, their actual expenses, which expenses shall be taxed as costs in the case.

[C73, § 474; C97, § 722; S13, § 722; C24, 27, 31, 35, 39, § **6135;** C46, 50, 54, 58, 62, 66, 71, § 397.20; C73, 75, 77, 79, 81, § 472.46]

C93, § 6B.46

2006 Acts, 1st Ex, ch 1001, §47, 49

Footnotes

Time and manner of service, R.C.P. 1.3021.315

Costs generally, chapter 625

6B.47 Court of condemnation. Transferred to § 6B.46; 2006 Acts, 1st Ex, ch 1001, § 47, 49.

6B.48 Procedure. Transferred to § 6B.46; 2006 Acts, 1st Ex, ch 1001, § 47, 49.

6B.49 Notice service. Transferred to § 6B.46; 2006 Acts, 1st Ex, ch 1001, § 47, 49.

6B.50 Powers of court duty of clerk vacancy. Transferred to § 6B.46; 2006 Acts, 1st Ex, ch 1001, § 47, 49.

6B.51 Costs expenses. Transferred to § 6B.46; 2006 Acts, 1st Ex, ch 1001, § 47, 49.

6B.52 Renegotiation of damages.

Whenever property or an interest therein has been taken by condemnation or has been purchased for a public use and a settlement for construction or maintenance damages has been thereafter entered into pursuant to said condemnation or purchase, the owner shall have five years from the date of said settlement to renegotiate construction or maintenance damages not apparent at the time of said settlement. The condemner or purchaser shall give written notice to the owner of such right of renegotiation at the time said settlement is entered into.

[C73, 75, 77, 79, 81, § 472.52]

C93, § 6B.52

6B.53 Procedure for homesteading projects. Repealed by 2007 Acts, ch 54, § 45.

6B.54 Acquisition policies for acquiring agencies.

For any public use, public purpose, or public improvement for which condemnation is sought, an acquiring agency shall, at a minimum, satisfy the following policies:

1. Every reasonable and good faith effort shall be made to acquire expeditiously real property by negotiation as provided in section 6B.2B.

2. Real property shall be appraised as required by section 6B.45 before the initiation of negotiations, and the owner or the owner's designated representative shall be given an opportunity to accompany at least one appraiser of the acquiring agency during an inspection of the property, except that an acquiring agency may prescribe a procedure to waive the appraisal in cases involving the acquisition of property with a low fair market value. In lieu of an appraisal, a utility or person under the jurisdiction of the utilities board of the department of commerce, or any other utility conferred the right by statute to condemn private property, shall provide in writing by certified mail to the owner of record thirty days before negotiations, the methods and factors used in arriving at an offered price for voluntary easements including the range of cash amount of each component.

3. Before the initiation of negotiations for real property, the acquiring agency shall establish an amount which it believes to be just compensation for the real property, and shall make a prompt offer to acquire the property for the full amount established by the agency. In no event shall the amount be less than the fair market value the acquiring agency has established for the property or property interest pursuant to the appraisal required in section 6B.45 or less than the value determined under the acquiring agency's waiver procedure established pursuant to subsection 2. A purchase offer made by an acquiring agency shall include provisions for payment to the owner of expenses, including relocation expenses, expenses listed in subsection 10, and other expenses

required by law to be paid by an acquiring agency to a condemnee. However, in the alternative, the acquiring agency may make, and the owner may accept, a purchase offer from the acquiring agency that is an amount equal to one hundred thirty percent of the appraisal amount plus payment to the owner of expenses listed in subsection 10, once those expenses have been determined. If the owner accepts such a purchase offer, the owner is barred from claiming payment from the acquiring agency for any other expenses allowed by law. In the case of a utility or person under the jurisdiction of the utilities board of the department of commerce, or any other utility conferred the right by statute to condemn private property, the amount shall not be less than the amount indicated by the methods and factors used in arriving at an offered price for a voluntary easement. 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.

4. The construction or development of a public improvement shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling or to move the person's business or farm operation without at least ninety days' written notice of the date by which the move is required.

5. If after damages have been finally determined and paid, an owner or tenant is permitted to occupy the real property acquired on a rental basis for a short term or for a period subject to termination on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

6. In no event shall the time of condemnation be advanced, or negotiations or condemnation and the deposit of funds in court for the use of the owner be deferred, or any other coercive action be taken to compel an agreement on the price to be paid for the property.

7. If an interest in real property is to be acquired by exercise of the power of eminent domain, formal condemnation proceedings shall be instituted. The acquiring agency shall not intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of the owner's real property.

8. If the acquisition of only a portion of property would leave the owner with an uneconomical remnant, the acquiring agency shall offer to acquire that remnant. For the purposes of this chapter, an *"uneconomical remnant"* is a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property, where the acquiring agency determines that the parcel has little or no value or utility to the owner.

9. A person whose real property is being acquired in accordance with this chapter, after the person has been fully informed of the person's right to receive just compensation for the property, may donate the property, any part of the property, any interest in the property, or any compensation paid for it as the person may determine.

10. As soon as practicable after the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is earlier, the acquiring agency shall reimburse the owner, to the extent the acquiring agency deems fair and reasonable, for expenses the owner necessarily incurred for all of the following:

a. Recording fees, transfer taxes, and similar expenses incidental to conveying the real property to the acquiring agency.

b. Penalty costs for full or partial prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property.

Payments and expenditures under this subsection are incident to and arise out of the program or project for which the acquisition activity takes place. Such payments and expenditures may be made from the funds made available for the program or project.

A person aggrieved by a determination as to the eligibility for or amount of a reimbursement may apply to have the matter reviewed by the acquiring agency or in accordance with section 316.9 if applicable.

11. An owner shall not be required to surrender possession of real property before the acquiring agency concerned pays the agreed purchase price.

12. After damages have been finally determined and paid, the acquiring agency may offer, and the owner may accept, an amount equal to thirty percent of the amount of damages plus payment to the owner of expenses listed in subsection 10, once those expenses have been determined. If the owner accepts such an offer, the owner is barred from claiming payment from the acquiring agency for any other expenses allowed by law. This subsection does not apply when property is being acquired for street and highway projects undertaken by the state, a county, or a city.

89 Acts, ch 20, § 19

CS89, § 472.54

C93, § 6B.54

99 Acts, ch 171, §19, 20, 42; 2006 Acts, 1st Ex, ch 1001, §18, 49

2006 amendment to subsection 3 takes effect January 1, 2007; 2006 amendments to balance of this section take effect July 14, 2006, and apply to applications for condemnation filed pursuant to §6B.3 on or after that date; subsection 12 applies to applications that are pending on July 14, 2006, if the appraisement report required under §6B.14 has not been filed with the sheriff; 2006 Acts, 1st Ex, ch 1001, §49

6B.55 Buildings, structures, and improvements policies for acquiring agencies.

For any public use, public purpose, or public improvement for which condemnation is sought, an acquiring agency shall at a minimum satisfy the following policies:

1. If an interest in real property is acquired, the acquiring agency shall acquire an equal interest in all buildings, structures, or other improvements located upon the real property which are required to be removed from the real property or which are determined to be adversely affected by the use to which the real property will be put.

2. For the purpose of determining the just compensation to be paid for any building, structure, or other improvement required to be acquired under this section, the building, structure, or other improvement shall be deemed to be a part of the real property to be acquired, notwithstanding the right or obligation of a tenant of the lands, as against the owner of any other interest in the real property, to remove the building, structure, or improvement at the expiration of the tenant's term. The fair market value which the building, structure, or improvement contributes to the fair market value of the real property to be acquired, or the fair market value of the building, structure, or improvement for removal from the real property, whichever is the greater, shall be paid to the owner of the building, structure, or improvement.

3. Payment for the building, structure, or improvement under this section shall not result in duplication of any payments otherwise authorized by state law. The payment shall not be made unless the owner of the land involved disclaims all interest in the improvements of the tenant. In consideration for any such payment, the tenant shall assign, transfer, and release all the tenant's right, title, and interest in and to the improvements. Nothing with regard to the above-mentioned acquisition of buildings, structures, or other improvements shall be construed to deprive the tenant of any rights to reject payment and to obtain payment for the property interests in accordance with other laws of this state.

89 Acts, ch 20, § 20

CS89, § 472.55

C93, § 6B.55

99 Acts, ch 171, §21, 42; 2006 Acts, 1st Ex, ch 1001, §19, 49

2006 amendment to unnumbered paragraph 1 takes effect July 14, 2006, and applies to applications for condemnation filed pursuant to §6B.3 on or after that date; 2006 Acts, 1st Ex, ch 1001, §49

6B.56 Disposition of condemned property.

1. If real property condemned pursuant to this chapter is not used for the purpose stated in the application filed pursuant to section 6B.3 and the acquiring agency seeks to dispose of the real property, the acquiring agency shall first offer the property for sale to the prior owner of the condemned property as provided in this section. If real property condemned pursuant to this chapter is used for the purpose stated in the application filed pursuant to section 6B.3 and the acquiring agency seeks to dispose of the real property by sale to a private person or entity within five years after acquisition of the property, the acquiring agency shall first offer the property for sale to the prior owner of the condemned property as provided in this section. For purposes of this section, the prior owner of the real property includes the successor in interest of the real property.

2. Before the real property may be offered for sale to the general public, the acquiring agency shall notify the prior owner of the real property condemned in writing of the acquiring agency's intent to dispose of the real property, of the current appraised value of the real property, and of the prior owner's right to purchase the real property within sixty days from the date the notice is served at a price equal to the current appraised value of the real property or the fair market value of the property at the time it was acquired by the acquiring agency from the prior owner plus cleanup costs incurred by the acquiring agency, whichever is less. However, the current appraised value of the real property shall be the purchase price to be paid by the previous owner if any other amount would result in a loss of federal funding for projects funded in whole or in part with federal funds. The notice sent by the acquiring agency as provided in this subsection shall be filed with the office of the recorder in the county in which the real property is located.

For purposes of this subsection, *"cleanup costs"* means costs incurred to abate a nuisance or a public nuisance as those terms are defined in chapters 657 and 657A and costs incurred to recycle and remediate land pursuant to chapter 455H.

3. If the prior owner elects to purchase the real property at the price established in subsection 2, before the expiration of the sixty-day period, the prior owner shall notify the acquiring agency in writing of this intention and file a copy of this notice with the office of the recorder in the county in which the real property is located.

4. The provisions of this section do not apply to the sale of unused right-of-way property as provided in chapter 306.

97 Acts, ch 149, §1; 2006 Acts, 1st Ex, ch 1001, §2022, 49

2006 amendments to subsections 13 take effect July 14, 2006; 2006 amendments to subsections 1 and 3 apply to applications for condemnation filed pursuant to §6B.3 on or after that date; 2006 Acts, 1st Ex, ch 1001, §49

6B.56A Disposition of condemned property five-year time period.

1. When five years have elapsed since property was condemned and the property has not been used for the purpose stated in the application filed pursuant to section 6B.3, and the acquiring agency has not taken action to dispose of the property pursuant to section 6B.56, the acquiring agency shall, within sixty days, adopt a resolution reaffirming the purpose for which the property will be used or offering the property for sale to the prior owner at a price as provided in section 6B.56. If the resolution adopted approves an offer of sale to the prior owner, the offer shall be made in writing and mailed by certified mail to the prior owner. The prior owner has one hundred eighty days after the offer is mailed to purchase the property from the acquiring agency.

2. If the acquiring agency has not adopted a resolution described in subsection 1 within the sixty-day time period, the prior owner may, in writing, petition the acquiring agency to offer the property for sale to the prior owner at a price as provided in section 6B.56. Within sixty days after receipt of such a petition, the acquiring agency shall adopt a resolution described in subsection 1. If the acquiring agency does not adopt such a resolution within sixty days after receipt of the petition, the acquiring agency is deemed to have offered the property for sale to the prior owner.

3. The acquiring agency shall give written notice to the owner of the right to purchase the property under this section at the time damages are paid to the owner.

4. This section does not apply to property acquired for street and highway projects undertaken by the state, a county, or a city.

2006 Acts, 1st Ex, ch 1001, §23, 49

Section is effective July 14, 2006, and applies to applications for condemnation filed pursuant to §6B.3 on or after that date; 2006 Acts, 1st Ex, ch 1001, §49

6B.57 Procedural compliance.

If an acquiring agency makes a good faith effort to serve, send, or provide the notices or documents required under this chapter to the owner and any contract purchaser of private property that is or may be the subject of condemnation, or to any tenant known to be occupying such property if notices or documents are required to be served, sent, or provided to such a person, but fails to provide the notice or documents to the owner and any contract purchaser, or to any tenant known to be occupying the property if applicable, such failure shall not constitute grounds for invalidation of the condemnation proceeding if the chief judge of the judicial district determines that such failure can be corrected by delaying the condemnation proceedings to allow compliance with the requirement or such failure does not unreasonably prejudice the owner or any contract purchaser.

99 Acts, ch 171, §22, 42; 2000 Acts, ch 1179, §21, 30; 2006 Acts, 1st Ex, ch 1001, §24, 49

2006 amendments take effect July 14, 2006; 2006 Acts, 1st Ex, ch 1001, §49

6B.58 Acquiring agency definition. Transferred to § 6B.1; 2006 Acts, 1st Ex, ch 1001, § 47, 49.

6B.59 Sale of acquired property reimbursement to landowner.

If an acquiring agency acquires property by condemnation, or by otherwise exercising the power of eminent domain, and that property is later sold by the acquiring agency for more than the acquisition price paid to the landowner, the acquiring agency shall pay to the landowner from whom the property was acquired the difference between the price at which it was acquired and the price at which it was sold by the acquiring agency less the cost of any improvements made to or benefiting the land by the acquiring agency. This section does not apply to property acquired by the state department of transportation.

99 Acts, ch 171, §24, 42; 2000 Acts, ch 1058, §1

6B.60 Rental charges prohibited.

Rent 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 to the condemnee pursuant to section 6B.25.

2006 Acts, 1st Ex, ch 1001, §26, 49

Section is effective July 14, 2006, and applies to applications for condemnation filed pursuant to §6B.3 on or after that date; 2006 Acts, 1st Ex, ch 1001, §49

6B.61 Approval of local elected officials required.

Notwithstanding any provision of law to the contrary, any entity created by or on behalf of one or more political subdivisions and granted, by statute, eminent domain authority to acquire property shall not exercise such authority outside the jurisdictional limits of the political subdivisions participating in the entity at the time of such exercise of authority without first presenting the proposal to acquire such property by eminent domain to the board of supervisors of each county where the property is located and such proposal receives the approval, by resolution, of each applicable board of supervisors. However, this section does not apply to an entity created by or on behalf of one or more political subdivisions if the entity is authorized by statute to act as a political subdivision and if this section would limit the ability of the entity to comply with requirements or limitations imposed by the Internal Revenue Code to preserve the tax exemption of interest payable on bonds or obligations of the entity acting as a political subdivision.

This section does not apply to a person issued a certificate of public convenience, use, and necessity under chapter 476A. This section does not apply to property condemned by or on behalf of a multistate entity created to provide drinking water that has received or is receiving federal funds, but only if such property is to be acquired for water transmission and service lines, pump stations, water storage tanks, meter houses and vaults, related appurtenances, or supporting utilities.

2006 Acts, 1st Ex, ch 1001, §27, 49

Section is effective July 14, 2006, and applies to applications for condemnation filed pursuant to §6B.3 on or after that date; 2006 Acts, 1st Ex, ch 1001, §49