

SECOND REGULAR SESSION

# HOUSE BILL NO. 3375

103RD GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE COSTLOW.

7316H.011

JOSEPH ENGLER, Chief Clerk

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## AN ACT

To repeal sections 523.001, 523.010, 523.020, 523.030, 523.039, 523.040, 523.250, 523.253, 523.256, and 523.265, RSMo, and section 523.061 as enacted by house bill no. 1606, one hundred first general assembly, second regular session, and section 523.061 as enacted by house bill no. 1944, ninety-third general assembly, second regular session, and to enact in lieu thereof eleven new sections relating to condemnation proceedings, with penalty provisions.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Sections 523.001, 523.010, 523.020, 523.030, 523.039, 523.040, 523.250, 2 523.253, 523.256, and 523.265, RSMo, and section 523.061 as enacted by house bill no. 3 1606, one hundred first general assembly, second regular session, and section 523.061 as 4 enacted by house bill no. 1944, ninety-third general assembly, second regular session, are 5 repealed and eleven new sections enacted in lieu thereof, to be known as sections 523.001, 6 523.010, 523.015, 523.030, 523.039, 523.040, 523.061, 523.250, 523.253, 523.256, and 7 523.265, to read as follows:

523.001. For the purposes of this chapter, the following terms shall mean:

2 (1) **"Beginning farmer or rancher", an individual or entity who:**

3 (a) **Has not operated a farm or ranch, or who has operated a farm or ranch for**

4 **not more than ten consecutive years. The requirement of this paragraph applies to all**

5 **members of an entity;**

6 (b) **Participates in the operation of the farm or ranch; and**

7 (c) **Is a resident of this state;**

EXPLANATION — Matter enclosed in bold-faced brackets ~~thus~~ in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

8           **(2) "Beginning farmer taking", any taking of any agricultural or horticultural**  
9 **property owned by a property owner qualified as a beginning farmer or rancher;**

10           **(3) "Fair market value", the value of the property taken after considering comparable**  
11 **sales in the area, capitalization of income, and replacement cost less depreciation, singularly**  
12 **or in combination, as appropriate, and additionally considering the value of the property**  
13 **based upon its highest and best use, using generally accepted appraisal practices. If less than**  
14 **the entire property is taken, fair market value shall mean the difference between the fair**  
15 **market value of the entire property immediately prior to the taking and the fair market value**  
16 **of the remaining or burdened property immediately after the taking, including consideration**  
17 **of the damage the condemning authority's proposed use of the condemned property**  
18 **shall cause to the remaining or burdened property if such proposed use of the**  
19 **condemned property reduces the value of the remaining or burdened property. The**  
20 **term "fair market value" shall not include any increase in the value of the remaining or**  
21 **burdened property caused by the condemning authority's proposed use of the**  
22 **condemned property;**

23           ~~[(2)]~~ **(4) "Heritage value", the value assigned to any real property, including but not**  
24 **limited to real property owned by a business enterprise with fewer than one hundred**  
25 **employees, that has been owned within the same family for fifty or more years, such value to**  
26 **be ~~[fifty]~~ twenty percent of fair market value;**

27           ~~[(3)]~~ **(5) "Homestead taking", any taking of a dwelling owned by the property owner**  
28 **and functioning as the owner's primary place of residence or any taking of the owner's**  
29 **property within three hundred feet of the owner's primary place of residence ~~[that prevents the~~**  
30 **~~owner from utilizing the property in substantially the same manner as it is currently being~~**  
31 **~~utilized].~~**

523.010. 1. In case land, or other property, is sought to be appropriated by any road,  
2 railroad, street railway, telephone, telegraph or any electrical corporation organized for the  
3 manufacture or transmission of electric current for light, heat or power, including the  
4 construction, when that is the case, of necessary dams and appurtenant canals, flumes, tunnels  
5 and tailraces and including the erection, when that is the case, of necessary electric steam  
6 powerhouses, hydroelectric powerhouses and electric substations or any oil, pipeline or gas  
7 corporation engaged in the business of transporting or carrying oil, liquid fertilizer solutions,  
8 or gas by means of pipes or pipelines laid underneath the surface of the ground, or other  
9 corporation created under the laws of this state for public use, and such corporation and the  
10 owners cannot agree upon the proper compensation to be paid, or in the case the owner is  
11 incapable of contracting, be unknown, or be a nonresident of the state, such corporation may  
12 apply to the circuit court of the county of this state where such land or any part thereof lies by  
13 petition setting forth the general directions in which it is desired to construct its road, railroad,

14 street railway, telephone, or telegraph line or electric line, including, when that is the case, the  
15 construction and maintenance of necessary dams and appurtenant canals, tunnels, flumes and  
16 tailraces and, when that is the case, the appropriation of land submerged by the construction  
17 of such dam, and including the erection and maintenance, when that is the case, of necessary  
18 electric steam powerhouses, hydroelectric powerhouses and electric substations, or oil,  
19 pipeline, liquid fertilizer solution pipeline, or gas line over or underneath the surface of such  
20 lands, a description of the real estate, or other property, which the company seeks to acquire;  
21 the names of the owners thereof, if known; or if unknown, a pertinent description of the  
22 property whose owners are unknown and praying the appointment of three disinterested  
23 residents of the county, as commissioners, or a jury, to assess the damages which such owners  
24 may severally sustain in consequence of the establishment, erection and maintenance of such  
25 road, railroad, street railway, telephone, telegraph line, or electrical line including damages  
26 from the construction and maintenance of necessary dams and the condemnation of land  
27 submerged thereby, and the construction and maintenance of appurtenant canals, flumes,  
28 tunnels and tailraces and the erection and maintenance of necessary electric steam  
29 powerhouses, hydroelectric powerhouses and electric substations, or oil, pipeline, or gas  
30 line over or underneath the surface of such lands; to which petition the owners of any or all as  
31 the plaintiff may elect of such parcels as lie within the county or circuit may be made parties  
32 defendant by names if the names are known, and by the description of the unknown owners of  
33 the land therein described if their names are unknown.

34         2. If the proceedings seek to affect the lands of persons under conservatorship, the  
35 conservators must be made parties defendant. If the present owner of any land to be affected  
36 has less estate than a fee, the person having the next vested estate in remainder may at the  
37 option of the petitioners be made party defendant; but if such remaindermen are not made  
38 parties, their interest shall not be bound by the proceedings.

39         3. It shall not be necessary to make any persons party defendants in respect to their  
40 ownership unless they are either in actual possession of the premises to be affected claiming  
41 title or having a title of the premises appearing of record upon the proper records of the  
42 county.

43         4. Except as provided in subsection 5 of this section, nothing in this chapter shall be  
44 construed to give a public utility, as defined in section 386.020, or a rural electric cooperative,  
45 as provided in chapter 394, the power to condemn property which is currently used by another  
46 provider of public utility service, including a municipality or a special purpose district, when  
47 such property is used or useful in providing utility services, if the public utility or cooperative  
48 seeking to condemn such property, directly or indirectly, will use or proposes to use the  
49 property for the same purpose, or a purpose substantially similar to the purpose for which the  
50 property is being used by the provider of the public utility service.

51           5. A public utility or a rural electric cooperative may only condemn the property of  
52 another provider of public utility service, even if the property is used or useful in providing  
53 utility services by such provider, if the condemnation is necessary for the public purpose of  
54 acquiring a nonexclusive easement or right-of-way across the property of such provider and  
55 only if the acquisition will not materially impair or interfere with the current use of such  
56 property by the utility or cooperative and will not prevent or materially impair such provider  
57 of public utility service from any future expansion of its facilities on such property.

58           6. If a public utility or rural electric cooperative seeks to condemn the property of  
59 another provider of public utility service, and the conditions in subsection 4 of this section do  
60 not apply, this section does not limit the condemnation powers otherwise possessed by such  
61 public utility or rural electric cooperative.

62           7. Suits in inverse condemnation or involving dangerous conditions of public  
63 property against a municipal corporation established under Article VI, Section 30(a) of the  
64 Missouri Constitution shall be brought only in the county where such land or any part thereof  
65 lies.

66           8. For purposes of this chapter, the authority for an electrical corporation as defined in  
67 section 386.020, except for an electrical corporation operating under a cooperative business  
68 plan as described in section 393.110, to condemn property for purposes of constructing an  
69 electric plant subject to a certificate of public convenience and necessity under subsection 1  
70 of section 393.170 shall not extend to the construction of a merchant transmission line with  
71 Federal Energy Regulatory Commission negotiated rate authority unless such line has a  
72 substation or converter station located in Missouri which is capable of delivering an amount  
73 of its electrical capacity to electrical customers in this state that is greater than or equal to the  
74 proportionate number of miles of the line that passes through the state. The provisions of this  
75 subsection shall not apply to applications filed pursuant to section 393.170 prior to August 28,  
76 2022.

77           **9. For the purposes of this chapter, the authority of any corporation set forth in**  
78 **subsection 1 of this section to condemn property shall not extend to:**

79           **(1) The construction or erection of any plant, tower, panel, or facility that**  
80 **utilizes, captures, or converts wind or air currents to generate or manufacture**  
81 **electricity; or**

82           **(2) The construction or erection of any plant, tower, panel, or facility that**  
83 **utilizes, captures, or converts the light or heat generated by the sun to generate or**  
84 **manufacture electricity.**

**523.015. 1. Any corporation, political subdivision, cooperative, or person with**  
2 **the authority to condemn property pursuant to this chapter or any other provision of**  
3 **law shall give the owner of any property at least fifteen days written notice that**

4 surveyors employed by the condemning corporation, political subdivision, cooperative,  
5 or person will enter the property proposed to be condemned for any surveying.

6       2. If any corporation, political subdivision, cooperative, or person with the  
7 authority to condemn property pursuant to this chapter or any other provision of law  
8 acquires any easement in this state by voluntary means or by condemnation, such  
9 corporation, political subdivision, cooperative, or person shall give at least five days  
10 written notice that such corporation, political subdivision, cooperative, or person, or its  
11 agents or employees, will enter upon the easement before entering such easement unless  
12 such corporation, political subdivision, cooperative, or person has to enter onto such  
13 property in an emergency to make repairs to avoid or remedy disruptions of utility  
14 service, or to prevent any threat to the life or property of any person.

15       3. If any corporation, political subdivision, cooperative, or person with the  
16 authority to condemn property pursuant to this chapter or any other provision of law  
17 acquires any easement in this state by voluntary means or by condemnation, and  
18 subsequently cuts or destroys any trees or vegetation upon or within the easement, such  
19 corporation, political subdivision, cooperative, or person shall, at its own expense,  
20 entirely remove all such trees or vegetation from the easement unless otherwise agreed  
21 in writing with the owner of the fee over which the easement exists.

22       4. If any corporation, political subdivision, cooperative, or person with the  
23 authority to condemn property pursuant to this chapter or any other provision of law  
24 acquires any easement in this state by voluntary means or by condemnation, and  
25 subsequently cuts or destroys any trees or vegetation upon or within the easement, such  
26 corporation, political subdivision, cooperative, or person shall, at its own expense,  
27 remove or grind all stumps in the easement to at least three inches in depth below the  
28 ground surface unless otherwise agreed in writing with the owner of the fee over which  
29 the easement exists.

30       5. If any corporation, political subdivision, cooperative, or person with the  
31 authority to condemn property pursuant to this chapter or any other provision of law  
32 acquires any easement in this state by voluntary means or by condemnation, and  
33 subsequently disturbs, causes damage by equipment or machinery, or removes any tree,  
34 vegetation, grass, earthwork, or terrace within the easement, or creates or causes any  
35 ruts, such corporation, political subdivision, cooperative, or person shall, at its own  
36 expense, repair and reseed any barren area utilizing best practices for erosion control as  
37 set forth by the Missouri soil and water commission unless otherwise agreed in writing  
38 with the owner of the fee over which the easement exists.

39       6. If any corporation, political subdivision, cooperative, or person with the  
40 authority to condemn property pursuant to this chapter or any other provision of law

41 acquires any easement in this state by voluntary means or by condemnation, and  
42 subsequently abandons or ceases to utilize or maintain any plant, pipe, line, tower, or  
43 any other facility built upon such easement, such corporation, political subdivision,  
44 cooperative, or person shall, at its own expense, remove from the property all above  
45 ground components of such plant, pipe, line, tower, or any other facility, and shall repair  
46 and reseed any barren area utilizing best practices for erosion control as set forth by the  
47 Missouri soil and water commission unless otherwise agreed in writing with the owner  
48 of the fee over which the easement exists.

49 7. If any corporation, political subdivision, cooperative, or person with the  
50 authority to condemn property pursuant to this chapter or any other provision of law  
51 acquires any easement in this state by voluntary means or by condemnation, and  
52 subsequently abandons or ceases to utilize or maintain any plant, pipe, line, tower, or  
53 any other facility built upon such easement, such corporation, political subdivision,  
54 cooperative, or person shall, at its own expense, remove from the property all  
55 components of such plant, pipe, line, tower, or any other facility located at three feet of  
56 depth or less below ground, and shall repair and reseed any barren area utilizing best  
57 practices for erosion control as set forth by the Missouri soil and water commission  
58 unless otherwise agreed in writing with the owner of the fee over which the easement  
59 exists.

60 8. If any corporation, political subdivision, cooperative, or person with the  
61 authority to condemn property pursuant to this chapter or any other provision of law  
62 acquires any easement in this state by voluntary means or by condemnation, and  
63 subsequently disturbs, causes damage to, or removes any fence, or portion thereof,  
64 owned by the property owner to access the easement area, such corporation, political  
65 subdivision, cooperative, or person shall, at its own expense, repair the fence to a lawful  
66 state to comply with chapter 272 unless otherwise agreed in writing with the owner of  
67 the fee over which the easement exists.

68 9. Any corporation, political subdivision, cooperative, or person with the  
69 authority to condemn property pursuant to this chapter or any other provision of law  
70 that violates in any material respect the provisions of this section shall be liable to the  
71 owner of the property over which such corporation, political subdivision, cooperative,  
72 or person holds an easement for a civil penalty of up to one thousand dollars for each  
73 violation for each day such violation persists, except that the maximum penalty for  
74 violation of the provisions of this section shall not exceed one hundred thousand dollars  
75 for any related series of violations. An action to recover such civil penalty may be  
76 brought by any aggrieved owner of the property over which an easement exists, or by  
77 the attorney general or by a prosecuting attorney or circuit attorney on behalf of any

78 **aggrieved owner of the property over which an easement exists, in the circuit court of**  
79 **the county where such property is located.**

80 **10. Any aggrieved owner of the property over which an easement exists, or the**  
81 **attorney general or a prosecuting attorney or circuit attorney, may bring an action in**  
82 **the circuit court of the county where such property is located for equitable relief to**  
83 **redress or restrain a violation by any corporation, political subdivision, cooperative, or**  
84 **person of any provision of this section. The court may grant such relief as is necessary**  
85 **or appropriate, including mandatory or prohibitive injunctive relief, temporary or**  
86 **permanent.**

87 **11. As used in this section, the term "political subdivision" means:**

88 **(1) Any agency or unit of this state;**

89 **(2) Any county of this state;**

90 **(3) Any municipality of this state;**

91 **(4) Any agency or unit authorized to levy taxes or empowered to cause taxes to**  
92 **be levied that now is, or hereafter shall be, authorized to acquire property by eminent**  
93 **domain;**

94 **(5) Townships, cities, towns, villages, schools, roads, drainage, sewers, and levee**  
95 **districts, and any other public subdivision, public corporation, or public quasi-**  
96 **corporation having the power to tax; or**

97 **(6) Any other entity empowered to exercise eminent domain authority pursuant**  
98 **to this chapter or any other provision of law.**

523.030. 1. Upon the filing of the petition, a summons shall be issued, giving such  
2 owner at least ~~ten~~ **sixty days' notice from the date of the service of such petition** of the  
3 time when said petition will be heard, which summons shall be served by the sheriff of the  
4 county, in the same manner as writs of summons are or may be by law required to be served.  
5 **Such petition shall not be heard less than sixty days from the date such summons is**  
6 **served.** If the name or residence of the owner is unknown, or if the owners, or any of them,  
7 do not reside within the state, notice of the time of hearing the petition, reciting the substance  
8 of the petition and the day fixed for the hearing thereof, shall be given by publication once  
9 each week for three consecutive weeks prior to the time of hearing the petition, in a  
10 newspaper published in the county in which the proceedings are pending, if one is published  
11 in the county, or if no newspaper is published in the county, or the publisher shall refuse to  
12 publish the same on tender of his usual charges for advertising, then by posting up said notice  
13 for three consecutive weeks at the door of the courthouse of the county wherein the lands or  
14 any portion of them lie.

15 **2. Upon service of the summons as set forth in subsection 1 of this section, the**  
16 **owner served shall have thirty days after the date of service of the summons to answer**

17 the petition by affirmation or denial of the assertions set forth therein and assert all  
18 available affirmative defenses. The owner may assert affirmative defenses for fraud,  
19 bad faith, lack of statutory authority and against any ultra vires or legally unauthorized  
20 act or omission by the condemning authority and shall have the standing to assert and  
21 prosecute claims for the same. If the owner answers or sets forth affirmative defenses to  
22 the petition, all rights of full discovery shall be afforded to the parties as those set forth  
23 for civil cases under the Missouri supreme court rules of civil procedure.

24 **3. Failure of the owner to answer the petition pursuant to subsection 2 of this**  
25 **section within thirty days of service of the summons shall not be deemed a default of the**  
26 **owner's rights to a hearing pursuant to this section and section 523.040.**

27 **4. At the initial hearing of the petition as set forth in the summons required by**  
28 **this section, the condemning authority shall have the burden to prove by clear and**  
29 **convincing evidence that the condemning authority has the statutory authority to**  
30 **condemn the property at issue in such petition and that such condemning authority has**  
31 **followed its own enacting and empowering statutes, rules, and bylaws in pursuing**  
32 **condemnation of the owner's property.**

33 **5. This chapter shall be liberally construed in favor of the private property**  
34 **owner and against condemning authorities.**

523.039. 1. In all eminent domain proceedings filed after December 31, 2006, just  
2 compensation for condemned property shall be determined under one of the three following  
3 subdivisions, whichever yields the highest compensation, as applicable to the particular type  
4 of property and taking:

5 (1) An amount equivalent to the fair market value of such property, **plus**  
6 **compensation equal to the amount of any federal, state, or local taxes owed by the owner**  
7 **of the condemned property as consequence of the eminent domain proceeding,**  
8 **including, but not limited to, all capital gains tax;**

9 (2) For condemnations that result in a homestead taking, an amount equivalent to the  
10 fair market value of such property multiplied by one hundred twenty-five percent, **plus**  
11 **compensation equal to the amount of any federal, state, or local taxes owed by the owner**  
12 **of the condemned property as consequence of the eminent domain proceeding,**  
13 **including, but not limited to, all capital gains tax; [or]**

14 (3) For condemnations of property [~~that result in any taking that prevents the owner~~  
15 ~~from utilizing property in substantially the same manner as it was currently being utilized on~~  
16 ~~the day of the taking and]~~ involving property owned within the same family for [~~fifty~~] **twenty**  
17 or more years, an amount equivalent to the sum of the fair market value and heritage value,  
18 **plus compensation equal to the amount of any federal, state, or local taxes owed by the**  
19 **owner of the condemned property as consequence of the eminent domain proceeding,**

20 **including, but not limited to, all capital gains tax.** For the purposes of this subdivision,  
21 family ownership of property may be established through evidence of ownership by children,  
22 grandchildren, siblings, or nephews or nieces of the family member owning the property fifty  
23 years prior to the taking; and in addition, may be established through marriage or adoption by  
24 such family members. If any entity owns the real property, members of the family shall have  
25 an ownership interest in more than fifty percent of the entity in order to be within the family  
26 line of ownership for the purposes of this subdivision. The property owner shall have the  
27 burden of proving to the commissioners or court that the property has been owned within the  
28 same family for fifty or more years; **or**

29 **(4) For condemnations that result in a beginning farmer taking, an amount**  
30 **equivalent to the fair market value of such property multiplied by one hundred twenty-**  
31 **five percent plus compensation equal to the amount of any federal, state, or local taxes**  
32 **owed by the owner of the condemned property as consequence of the eminent domain**  
33 **proceeding, including, but not limited to, all capital gains tax.**

34 2. For eminent domain proceedings of any agricultural or horticultural property by an  
35 electrical corporation as defined in section 386.020, except for an electrical corporation  
36 operating under a cooperative business plan as described in section 393.110, for the purposes  
37 of constructing an electric plant subject to a certificate of convenience and necessity under  
38 subsection 1 of section 393.170 just compensation shall be an amount equivalent to fair  
39 market value multiplied by one hundred fifty percent, as determined by the court, **plus**  
40 **compensation equal to the amount of any federal, state, or local taxes owed by the owner**  
41 **of the condemned property as consequence of the eminent domain proceeding,**  
42 **including, but not limited to, all capital gains tax.** The provisions of this subsection shall  
43 not apply to applications filed pursuant to section 393.170 prior to August 28, 2022.

523.040. 1. The court, or judge thereof in vacation, on being satisfied that due notice  
2 of the pendency of the petition has been given, **and that the condemning authority has**  
3 **proven by clear and convincing evidence that the condemning authority has the**  
4 **statutory authority to condemn the property at issue in such petition and that such**  
5 **condemning authority has followed its own enacting and empowering statutes, rules,**  
6 **and bylaws in pursuing condemnation of the owner's property as set forth in section**  
7 **523.030,** shall appoint three disinterested commissioners, who shall be residents of the county  
8 in which the real estate or a part thereof is situated, and in any city not within a county, any  
9 county with a charter form of government and with more than one million inhabitants, or any  
10 county with a charter form of government and with more than six hundred thousand but fewer  
11 than seven hundred thousand inhabitants at least one of the commissioners shall be either a  
12 licensed real estate broker or a state-licensed or state-certified real estate appraiser, to assess  
13 the damages which the owners may severally sustain by reason of such appropriation, who,

14 within forty-five days after appointment by the court, which forty-five days may be extended  
15 by the court to a date certain with good cause shown, after applying the definition of fair  
16 market value contained in subdivision (1) of section 523.001, and after having viewed the  
17 property, shall return to the clerk of such court, under oath, their report in duplicate of such  
18 assessment of damages, setting forth the amount of damages allowed to the person or persons  
19 named as owning or claiming the tract of land condemned, and should more than one tract be  
20 condemned in the petition, then the damages allowed to the owner, owners, claimant or  
21 claimants of each tract, respectively, shall be stated separately, together with a specific  
22 description of the tracts for which such damages are assessed; and the clerk shall file one copy  
23 of said report in his office and record the same in the order book of the court, and he shall  
24 deliver the other copy, duly certified by him, to the recorder of deeds of the county where the  
25 land lies (or to the recorder of deeds of the City of St. Louis, if the land lies in said city) who  
26 shall record the same in his office, and index each tract separately as provided in section  
27 59.440, and the fee for so recording shall be taxed by the clerk as costs in the proceedings;  
28 and thereupon such company shall pay to the clerk the amount thus assessed for the party in  
29 whose favor such damages have been assessed; and on making such payment it shall be  
30 lawful for such company to hold the interest in the property so appropriated for the uses  
31 prescribed in this section; and upon failure to pay the assessment, the court may, upon motion  
32 and notice by the party entitled to such damages, enforce the payment of the same by  
33 execution, unless the said company shall, within ten days from the return of such assessment,  
34 elect to abandon the proposed appropriation of any parcel of land, by an instrument in writing  
35 to that effect, to be filed with the clerk of the court, and entered on the minutes of the court,  
36 and as to so much as is thus abandoned, the assessment of damages shall be void.

37         2. Prior to the issuance of any report under subsection 1 of this section, a  
38 commissioner shall notify all parties named in the condemnation petition no less than ten days  
39 prior to the commissioners' viewing of the property of the named parties' opportunity to  
40 accompany the commissioners on the commissioners' viewing of the property and of the  
41 named parties' opportunity to present information to the commissioners.

42         3. The commissioners shall view the property, hear arguments, and review other  
43 relevant information that may be offered by the parties.

44         4. In any eminent domain proceeding involving agricultural or horticultural property,  
45 for purposes of constructing an electric plant subject to a certificate of convenience and  
46 necessity under subsection 1 of section 393.170 at least one of the disinterested  
47 commissioners appointed by the court shall be a farmer who has been engaged in farming,  
48 as defined in section 350.010, for a minimum of ten years in the county where such property  
49 is situated. The provisions of this subsection shall not apply to applications filed pursuant to  
50 section 393.170 prior to August 28, 2022.

~~[523.061. After the filing of the commissioners' report pursuant to section 523.040, the circuit judge presiding over the condemnation proceeding shall apply the provisions of section 523.039 and shall determine whether a homestead taking has occurred and shall determine whether heritage value is payable and shall increase the commissioners' award to provide for the additional compensation due where a homestead taking occurs or where heritage value applies, in accordance with the just compensation provisions of section 523.039. If a jury trial of exceptions occurs under section 523.060 and the circuit judge presiding over the condemnation proceeding has determined that a homestead taking has occurred or heritage value is payable, the circuit judge presiding over the condemnation proceeding shall apply the provisions of section 523.039 and shall increase the jury verdict to provide for the additional compensation due where a homestead taking occurs or where heritage value applies, in accordance with the just compensation provisions of section 523.039. Notwithstanding any other provision of law in sections 523.001 to 523.286 to the contrary, a circuit judge who determines that heritage value is payable as provided in this section shall not increase the commissioners' award or jury verdict to provide for the additional compensation due where heritage value applies if the plaintiff is a city, town, or village that is incorporated in accordance with the laws of this state and the plaintiff moves for exclusion of the heritage value and shows after an evidentiary hearing by a preponderance of the evidence that the property taken has been:~~

- ~~(1) Abandoned;~~
- ~~(2) Declared a nuisance and been ordered to be vacated;~~
- ~~(3) Demolished or repaired after notice and hearing; or~~
- ~~(4) Materially and negatively contributed to a blighted area as that term is defined in section 99.805.]~~

523.061. After the filing of the commissioners' report pursuant to section 523.040, the circuit judge presiding over the condemnation proceeding shall apply the provisions of section 523.039 and shall determine whether a homestead taking **or beginning farmer taking** has occurred and shall determine whether heritage value is payable and shall increase the commissioners' award to provide for the additional compensation due where a homestead taking **or beginning farmer taking** occurs or where heritage value applies, in accordance with the just compensation provisions of section 523.039. If a jury trial of exceptions occurs under section 523.060 **and the circuit judge presiding over the condemnation proceeding has determined that a homestead taking or beginning farmer taking has occurred or that the heritage value is payable**, the circuit judge presiding over the condemnation proceeding shall apply the provisions of section 523.039 and ~~[shall determine whether a homestead taking has occurred and shall determine whether heritage value is payable and]~~ shall increase the jury verdict to provide for the additional compensation due where a homestead taking **or beginning farmer taking** occurs or where heritage value applies, in accordance with the just compensation provisions of section 523.039.

523.250. 1. At least sixty days before filing of a condemnation petition seeking to acquire an interest in real property, the condemning authority shall provide the owner of record of such property with a written notice concerning the intended acquisition. Such notice shall include:

- (1) Identification of the interest in real property to be acquired and a statement of the legal description or commonly known location of the property;
- (2) The purpose or purposes for which the property is to be acquired;
- (3) A statement that the property owner has the right to:
  - (a) Seek legal counsel at the owner's expense;
  - (b) Make a counteroffer and engage in further negotiations;
  - (c) Obtain such owner's own appraisal of just compensation;
  - (d) Have just compensation determined preliminarily by court-appointed condemnation commissioners and, ultimately, by a jury;
  - (e) Seek assistance from the office of the ombudsman for property rights created under section 523.277;
  - (f) Contest the right to condemn in the condemnation proceeding; ~~and~~
  - (g) Exercise the rights to request vacation of an easement under the procedures and circumstances provided for in section 527.188;
  - (h) Seek an award for heritage value, a homestead taking, or a beginning farmer taking pursuant to sections 523.001, 523.039, and 523.061; and**
  - (i) Seek attorney's fees pursuant to 523.253 if the amount awarded to the property owner by the commissioners or jury is greater than the offer made by the condemning authority; and**
- (4) A copy of section 523.015 and the list of obligations and remedies set forth in section 523.015.**

An owner may waive the requirements of this subsection prescribed above in a writing executed by the owner.

2. The written notice required by this section shall be deposited in the United States mail, certified or registered, and with postage prepaid, addressed to the owner of record as listed in the office of the city or county assessor for the city or county in which the property is located. The receipt issued to the condemning authority by the United States Post Office for certified or registered mail shall constitute proof of compliance with this notice requirement; provided, however, that nothing in this section shall preclude a condemning authority from proving compliance with this notice requirement by other competent evidence.

523.253. 1. A condemning authority shall present a written offer to all owners of record of the property. The offer must be made at least thirty days before filing a

3 condemnation petition and shall be held open for the thirty-day period unless an agreement is  
4 reached sooner. **The written offer presented pursuant to this section shall also include a**  
5 **notice that all owners of record may seek an award for heritage value, a homestead**  
6 **taking, or a beginning farmer taking pursuant to sections 523.001, 523.039, and 523.061,**  
7 **a notice that all owners of record have the right to pursue attorney's fees pursuant to**  
8 **subsection 3 of this section, and a copy of section 523.015 and the list of obligations and**  
9 **remedies set forth in section 523.015.** The offer shall be deposited in the United States mail,  
10 certified or registered, and with postage prepaid, addressed to the owner of record as listed in  
11 the office of the city or county assessor for the city or county in which the property is located.  
12 The receipt issued to the condemning authority by the United States [~~Post Office~~] **Postal**  
13 **Service** for certified or registered mail shall constitute proof of compliance with this  
14 requirement; provided, however, that nothing in this section shall preclude a condemning  
15 authority from proving compliance with this requirement by other competent evidence.  
16 Nothing in this section shall prohibit the parties from negotiating during the thirty-day period.

17       2. (1) Any condemning authority shall, at the time of the offer, provide the property  
18 owner with an appraisal or an explanation with supporting financial data for its determination  
19 of the value of the property for purposes of the offer made in subsection 1 of this section.

20       (2) Any appraisal referred to in this section shall be made by a state-licensed or state-  
21 certified appraiser using generally accepted appraisal practices.

22       **3. In any condemnation proceeding, if the amount awarded by the**  
23 **commissioners or jury is greater than the offer made by the condemning authority**  
24 **pursuant to this section, the court shall award attorney's fees to the property owner in**  
25 **addition to the award in such proceeding.**

523.256. Before a court may enter an order of condemnation, the court shall find that  
2 the condemning authority engaged in good faith negotiations prior to filing the condemnation  
3 petition. A condemning authority shall be deemed to have engaged in good faith negotiations  
4 if:

5       (1) It has properly and timely given all notices to owners required by this chapter;

6       (2) Its offer under section 523.253 was no lower than the amount reflected in an  
7 appraisal performed by a state-licensed or state-certified appraiser for the condemning  
8 authority, provided an appraisal is given to the owner pursuant to subsection 2 of section  
9 523.253 or, in other cases, the offer is no lower than the amount provided in the basis for its  
10 determination of the value of the property as provided to the owner under subsection 2 of  
11 section 523.253;

12       (3) For condemnation of any agricultural or horticultural property for the construction  
13 of an electrical transmission line [~~designed to transmit electricity at three hundred forty-five~~  
14 ~~kilovolts or greater~~], but not for condemnation of such property by an electrical corporation

15 operating under a cooperative business plan as described in section 393.110, for the purposes  
16 of constructing an electric plant subject to a certificate of convenience and necessity under  
17 subsection 1 of section 393.170, the total compensation package offered was no lower than  
18 the amount reflected in an appraisal performed by a state-licensed or state-certified appraiser  
19 for the condemning authority multiplied by one hundred fifty percent. The provisions of this  
20 subdivision shall not apply to applications filed pursuant to section 393.170 prior to August  
21 28, 2022;

22 (4) The owner has been given an opportunity to obtain his or her own appraisal from  
23 a state-licensed or state-certified appraiser of his or her choice; and

24 (5) Where applicable, it has considered an alternate location suggested by the owner  
25 under section 523.265.

26

27 If the court does not find that good faith negotiations have occurred, the court shall dismiss  
28 the condemnation petition, without prejudice, and shall order the condemning authority to  
29 reimburse the owner for his or her actual reasonable attorneys' fees and costs incurred with  
30 respect to the condemnation proceeding which has been dismissed.

523.265. With regard to property interests acquired by condemnation or negotiations  
2 in lieu of the exercise thereof, within thirty days of receiving a written notice sent under  
3 section 523.250, the landowner may propose to the condemning authority in writing an  
4 alternative location for the property to be condemned, which alternative location shall be on  
5 the same parcel of the landowner's property as the property the condemning authority seeks to  
6 condemn. The proposal shall describe the alternative location in such detail that the  
7 alternative location is clearly defined for the condemning authority. The condemning  
8 authority shall consider all such alternative locations. This section shall not apply to takings  
9 of an entire parcel of land. A written statement by the condemning authority to the landowner  
10 that it has considered all such alternative locations, and ~~briefly stating~~ **setting forth with**  
11 **specificity** why they were rejected or accepted, is conclusive evidence that sufficient  
12 consideration was given to the alternative locations. **Any rejection of the landowner's**  
13 **suggested alternative location shall not be arbitrary or capricious or induced by fraud,**  
14 **collusion, or bad faith and shall be supported by substantial evidence. A condemning**  
15 **authority or the affected landowner may seek a determination as to whether these**  
16 **standards have been met by a court of competent jurisdiction in any condemnation**  
17 **action filed to acquire the owner's property or in an action seeking a declaratory**  
18 **judgment.**

2           ~~[523.020. Any number of owners, residents in the same county or~~  
3           ~~circuit, may be joined in one petition, and the damages to each shall be~~  
              ~~separately assessed by the same commissioners.]~~

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