

FIRST REGULAR SESSION

HOUSE BILL NO. 795

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE WALKER (3).

1479H.02I

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 523.001, 523.010, 523.039, and 523.265, RSMo, and to enact in lieu thereof four new sections relating to condemnation proceedings.

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

Section A. Sections 523.001, 523.010, 523.039, and 523.265, RSMo, are repealed and
2 four new sections enacted in lieu thereof, to be known as sections 523.001, 523.010, 523.039,
3 and 523.263, to read as follows:

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

2 **(1) "Colocate", means to share a location or pole;**

3 **[+]** (2) "Fair market value", the value of the property taken after considering
4 comparable sales in the area, capitalization of income, and replacement cost less depreciation,
5 singularly or in combination, as appropriate, and additionally considering the value of the
6 property based upon its highest and best use, using generally accepted appraisal practices. If less
7 than the entire property is taken, fair market value shall mean the difference between the fair
8 market value of the entire property immediately prior to the taking and the fair market value of
9 the remaining or burdened property immediately after the taking;

10 **[?]** (3) "Heritage value", the value assigned to any real property, including but not
11 limited to real property owned by a business enterprise with fewer than one hundred employees,
12 that has been owned within the same family for fifty or more years, such value to be fifty percent
13 of fair market value;

14 **[?]** (4) "Homestead taking", any taking of a dwelling owned by the property owner and
15 functioning as the owner's primary place of residence or any taking of the owner's property

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.

16 within three hundred feet of the owner's primary place of residence that prevents the owner from
17 utilizing the property in substantially the same manner as it is currently being utilized;

18 **(5) "Structure type", an agricultural, residential, commercial, industrial or other**
19 **building, or a mechanical installation, machinery or apparatus;**

20 **(6) "Utility", includes every pipeline corporation, gas corporation, electric**
21 **corporation, telecommunications company, water corporation, heating or refrigerating**
22 **corporation, and sewer corporation.**

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, or
8 gas by means of pipes or pipelines laid underneath the surface of the ground, or other corporation
9 created under the laws of this state for public use, and such corporation and the owners cannot
10 agree upon the proper compensation to be paid, or in the case the owner is incapable of
11 contracting, be unknown, or be a nonresident of the state, such corporation may apply to the
12 circuit court of the county of this state where such land or any part thereof lies by petition setting
13 forth the general directions in which it is desired to construct its road, railroad, street railway,
14 telephone, or telegraph line or electric line, including, when that is the case, the construction and
15 maintenance of necessary dams and appurtenant canals, tunnels, flumes and tailraces and, when
16 that is the case, the appropriation of land submerged by the construction of such dam, and
17 including the erection and maintenance, when that is the case, of necessary electric steam
18 powerhouses, hydroelectric powerhouses and electric substations, or oil, pipeline, liquid fertilizer
19 solution pipeline, or gas line over or underneath the surface of such lands, a description of the
20 real estate, or other property, which the company seeks to acquire; the names of the owners
21 thereof, if known; or if unknown, a pertinent description of the property whose owners are
22 unknown and praying the appointment of three disinterested residents of the county, as
23 commissioners, or a jury, to assess the damages which such owners may severally sustain in
24 consequence of the establishment, erection and maintenance of such road, railroad, street
25 railway, telephone, telegraph line, or electrical line including damages from the construction and
26 maintenance of necessary dams and the condemnation of land submerged thereby, and the
27 construction and maintenance of appurtenant canals, flumes, tunnels and tailraces and the
28 erection and maintenance of necessary electric steam powerhouses, hydroelectric powerhouses
29 and electric substations, or oil, pipeline, or gas line over or underneath the surface of such lands;

30 to which petition the owners of any or all as the plaintiff may elect of such parcels as lie within
31 the county or circuit may be made parties defendant by names if the names are known, and by
32 the description of the unknown owners of the land therein described if their names are unknown.

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

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

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

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

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

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

523.039. In all condemnation proceedings filed after December 31, [2006] 2017, just
2 compensation for condemned property shall be determined under one of the [three] four

3 following subdivisions, whichever yields the highest compensation, as applicable to the
4 particular type of property and taking:

5 (1) An amount equivalent to the fair market value of such property;

6 (2) For condemnations that result in a homestead taking, an amount equivalent to the fair
7 market value of such property multiplied by one hundred twenty-five percent;

8 **(3) For any upgrade or addition to an existing easement, a mutually agreed-upon
9 amount that only the property owner or legally competent agent may consent to, including
10 any construction damages to the property; or**

11 [(3)] (4) For condemnations of property that result in any taking that prevents the owner
12 from utilizing property in substantially the same manner as it was currently being utilized on the
13 day of the taking and involving property owned within the same family for fifty or more years,
14 an amount equivalent to the sum of the fair market value and heritage value. For the purposes
15 of this subdivision, family ownership of property may be established through evidence of
16 ownership by children, grandchildren, siblings, or nephews or nieces of the family member
17 owning the property fifty years prior to the taking; and in addition, may be established through
18 marriage or adoption by such family members. If any entity owns the real property, members
19 of the family shall have an ownership interest in more than fifty percent of the entity in order to
20 be within the family line of ownership for the purposes of this subdivision. The property owner
21 shall have the burden of proving to the commissioners or jury that the property has been owned
22 within the same family for fifty or more years.

523.263. 1. **It shall be favorable for condemnation plans to use state-owned
2 conservation property. A condemnation proposal may be rejected if an alternative route
3 through conservation land would be possible.**

4 2. **If land is sought to be acquired for a utility, the following steps shall be followed:**

5 (1) **If an existing easement for the same type of utility that can cover most or part
6 of the distance for the utility in question exists, the applying entity shall:**

7 (a) **If the entity holds the easement, upgrade the existing structure, offering
8 additional, mutually agreed-upon compensation to the current landowner; and resolve any
9 and all construction damages to the landowner's satisfaction or the satisfaction of the
10 commissioners appointed under section 523.040; or**

11 (b) **If the entity does not hold the easement, colocate with any entity that holds the
12 necessary easement.**

13

14 **In the case that upgrades and colocation cannot be agreed upon, all parties will be subject
15 to binding arbitration at the discretion of the easement holder at the expense of the
16 applying entity;**

17 **(2) Any and all routing shall take place along section or boundary lines unless an
18 alternate route that deviates from section and boundary lines is freely negotiated with the
19 landowner;**

20 **(3) Easements shall be limited to the initial structure type and use, barring any
21 additional renegotiation with the landowner. If a route cannot be agreed upon through the
22 provisions stated in this section, the project shall be abandoned and the entity may reapply
23 to the public service commission and a court of competent jurisdiction no less than five
24 years after abandonment.**

25 **3. Any entity seeking to acquire land as described in subsection 2 of this section
26 shall obtain a written easement agreement signed by at least sixty percent of impacted
27 property owners or legally competent agent before taking action on the land.**

28 **4. This section applies to all future routes and any routes with an outstanding
29 easement.**

2 [523.265. With regard to property interests acquired by condemnation or
3 negotiations in lieu of the exercise thereof, within thirty days of receiving a
4 written notice sent under section 523.250, the landowner may propose to the
5 condemning authority in writing an alternative location for the property to be
6 condemned, which alternative location shall be on the same parcel of the
7 landowner's property as the property the condemning authority seeks to condemn.
8 The proposal shall describe the alternative location in such detail that the
9 alternative location is clearly defined for the condemning authority. The
10 condemning authority shall consider all such alternative locations. This section
11 shall not apply to takings of an entire parcel of land. A written statement by the
12 condemning authority to the landowner that it has considered all such alternative
13 locations, and briefly stating why they were rejected or accepted, is conclusive
evidence that sufficient consideration was given to the alternative locations.]

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