

SECOND REGULAR SESSION

HOUSE BILL NO. 1363

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE COOPER (158).

Read 1st time January 12, 2006 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

4272L.011

AN ACT

To repeal sections 523.040 and 523.205, RSMo, and to enact in lieu thereof nine new sections relating to eminent domain, with a contingent effective date.

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

Section A. Sections 523.040 and 523.205, RSMo, are repealed and nine new sections
2 enacted in lieu thereof, to be known as sections 523.012, 523.025, 523.035, 523.040, 523.094,
3 523.110, 523.120, 523.125, and 523.205, to read as follows:

**523.012. The state or any political subdivision of the state shall set forth in writing
2 a general description of the project it intends to complete that requires the use of eminent
3 domain before proceeding with the condemnation of property. The description of the
4 project shall include its intended benefit to the public, an explanation of if or how the
5 public will use the condemned property, the estimated costs, the anticipated sources of
6 funds, the anticipated date of the retirement of obligations incurred to finance the project,
7 and the plan for providing relocation assistance as required by section 523.205.**

**523.025. Notwithstanding any other provision of law to the contrary, no political
2 subdivision shall exercise the power of eminent domain or condemnation until the
3 governing body approves of the proposed condemnation by a two-thirds majority vote.**

**523.035. 1. After the petition has been filed under section 523.030, the court shall,
2 prior to appointing commissioners under section 523.040, determine whether:**

**(1) The condemning entity has the authority to exercise the power of eminent
3 domain;
4**

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.

5 **(2) The property sought to be condemned is subject to the exercise of eminent**
6 **domain;**

7 **(3) The property sought to be condemned is for a public use; and**

8 **(4) The condemning entity is properly exercising the power of eminent domain in**
9 **the particular proceeding.**

10

11 **The court may also determine any other issues raised by the owner of the property which**
12 **attacks the validity of the condemning entity's right to exercise eminent domain over the**
13 **owner's property.**

14 **2. If the court determines that the condemning entity has satisfied all the**
15 **requirements of subsection 1 of this section, the court shall enter an interlocutory order to**
16 **such effect. An interlocutory appeal shall lie from the decision as a matter of right.**

17 **3. If the court determines that the condemning entity has not satisfied all the**
18 **requirements of subsection 1 of this section and does not have the authority to exercise the**
19 **power of eminent domain in this particular proceeding, the court shall dismiss the**
20 **condemning entity's petition with prejudice and direct the condemning entity to pay the**
21 **owner's court costs and attorneys' fees.**

22 **4. The appeal provided for in subsection 2 of this section shall be an interlocutory**
23 **appeal and filed in the appropriate district of the Missouri court of appeals. Notice of such**
24 **interlocutory appeal shall be filed within three days of the entry of the order of trial court;**
25 **the time limits applicable to such appeal shall be the same as in interlocutory appeals**
26 **allowed to the state in criminal cases.**

2 523.040. The court, or judge thereof in vacation, on being satisfied that due notice of the
3 pendency of the petition has been given, shall appoint three disinterested commissioners, who
4 shall be residents of the county in which the real estate or a part thereof is situated[, to]. **The**
5 **Missouri supreme court shall promulgate rules to establish uniform instructions to be**
6 **given to commissioners regarding the scope and nature of their duties when determining**
7 **the amount of compensation an owner is to receive for his or her condemned property.**
8 **The commissioners shall** assess the damages which the owners may severally sustain by reason
9 of such appropriation, who, after having viewed the property, shall return to the clerk of such
10 court, under oath, their report in duplicate, of such assessment of damages, setting forth the
11 amount of damages allowed to the person or persons named as owning or claiming the tract of
12 land condemned, and should more than one tract be condemned in the petition, then the damages
13 allowed to the owner, owners, claimant or claimants of each tract, respectively, shall be stated
14 separately, together with a specific description of the tracts for which such damages are assessed;
15 and the clerk shall file one copy of said report in his office and record the same in the order book
of the court, and he shall deliver the other copy, duly certified by him, to the recorder of deeds

16 of the county where the land lies (or to the recorder of deeds of the city of St. Louis, if the land
17 lies in said city) who shall record the same in his office, and index each tract separately as
18 provided in section 59.440, RSMo, and the fee for so recording shall be taxed by the clerk as
19 costs in the proceedings; and thereupon such company shall pay to the clerk the amount thus
20 assessed for the party in whose favor such damages have been assessed; and on making such
21 payment it shall be lawful for such company to hold the interest in the property so appropriated
22 for the uses prescribed in this section; and upon failure to pay the assessment, the court may,
23 upon motion and notice by the party entitled to such damages, enforce the payment of the same
24 by execution, unless the said company shall, within ten days from the return of such assessment,
25 elect to abandon the proposed appropriation of any parcel of land, by an instrument in writing
26 to that effect, to be filed with the clerk of the court, and entered on the minutes of the court, and
27 as to so much as is thus abandoned, the assessment of damages shall be void.

**523.094. The state or any political subdivision of the state shall not exercise the
2 power of eminent domain to acquire property for the purpose of economic development.
3 For the purpose of this section, "economic development" means any activity performed to
4 increase tax revenue, tax base, employment rates, or general economic health, when the
5 activity does not result in the transfer of property to:**

6 **(1) Public ownership;**

7 **(2) A private entity that is a common carrier;**

8 **(3) A public utility, rural electric cooperative, or municipally-owned utility.**

**523.110. When any entity with condemnation authority negotiates with a property
2 owner to acquire any property interest which may eventually be acquired through formal
3 eminent domain proceedings, the condemning entity shall provide the owner of the
4 property a form containing a written summary of the rights of an owner of property to be
5 acquired under this chapter via certified mail return receipt requested. If the condemning
6 entity does not supply the owner of the real property with this form, a presumption shall
7 exist that any sale or contract entered into between the condemning entity and the owner
8 was not voluntary and the condemning entity may be held responsible for any relief, if any,
9 as the court may determine to be appropriate considering all of the facts and
10 circumstances, including, but not limited to, an award of punitive damages.**

**523.120. 1. Before proceeding to acquire any property interest by condemnation,
2 a condemning entity shall give notice of such intent, together with a description of the
3 property interest to be acquired, notice of the property owners' right to a hearing, and
4 notice that the decision determined at that hearing may be appealed, to be heard by a jury
5 of peers, to anyone having an interest of record in the property involved. Such notice shall
6 advise that the condemning entity shall pay the reasonable costs of an appraisal under
7 subsection 2 of this section. Such notice, however, need not be given to any of such persons**

8 who cannot be found by the condemning entity upon the exercise of due diligence. Upon
9 receipt of such notice, such persons may employ an appraiser of their choosing to appraise
10 the property interest to be acquired. Such appraisal shall be made using sound, fair, and
11 recognized appraisal practices which are consistent with law, and which shall consider, but
12 are not limited to the following factors:

- 13 (1) Comparable sales in the area;
- 14 (2) Appraisal value of like property in the area;
- 15 (3) Term of ownership of property by current owner;
- 16 (4) Current use of property and future use of property;
- 17 (5) Availability of like property in the area;
- 18 (6) Anticipated financial gain from proposed future use.

19

20 The value of the land or property actually taken shall be equal to the fair market value
21 with upward adjustments for the factors listed in subdivisions (1) to (6) of this subsection.
22 Within ninety days of the date of such notice, such persons may submit to the condemning
23 entity a copy of such appraisal. The condemning entity shall, immediately upon receipt
24 thereof, submit to such persons copies of its appraisals. If the property interest is being
25 acquired in relation to a federal aid project, the appraisals submitted by the condemning
26 entity shall be those which have been approved by it pursuant to applicable statutes and
27 regulations, if such approval is required. All such appraisals may be used by the parties
28 to negotiate in good faith for the acquisition of the property interest, but only the
29 condemning entity shall be bound by such appraisals.

30 2. If an appraisal is submitted to the condemning entity in accordance with the
31 provisions of subsection 1 of this section, the condemning entity shall pay the reasonable
32 costs of such appraisal. If more than one person is interested in the property sought to be
33 acquired and such persons cannot agree on an appraisal to be submitted under subsection
34 1 of this section, the condemning entity shall be relieved of any obligation imposed upon
35 it to pay for such appraisals as may be submitted to it under this section.

36 3. Nothing in this section shall be construed as limiting in any way the obligation
37 of the condemning entity to negotiate in good faith for the acquisition of any property
38 interest sought prior to instituting eminent domain proceedings or as limiting in any way
39 the discovery rights of parties to eminent domain proceedings.

40 4. Nothing in this section shall prevent the condemning entity from complying with
41 federal and state requirements to qualify the authority for federal aid grants.

42 5. A condemning entity shall not make an offer to purchase the property or
43 property interest that is less than the fair market value the condemning entity has
44 established for the property or property interest pursuant to the appraisal required in

45 subsection 1 of this section. A condemning entity need not make an offer in excess of that
46 amount in order to satisfy the requirement to negotiate in good faith.

47 6. No later than ten days before the formal filing of a petition under section
48 523.010, the condemning entity shall make a written offer to purchase the desired property
49 or property interest.

50 7. Upon submitting an offer complying with the requirements of subsection 6 of this
51 section, the condemning entity shall file a copy of such offer in the office of the recorder
52 of deeds in the county in which the property or property interest is located on the same day
53 as which it submits such offer to the condemnee.

54 8. If the condemning entity and the condemn fail to reach agreement and the action
55 proceeds to trial before a commissioner, as provided by section 523.040, or before a jury,
56 and the amount of damages awarded the condemn by the judgment, exclusive of interest
57 and costs, is twenty-five percent greater than the amount specified in the offer made under
58 subsection 6 of this section, the court shall order the condemning entity to pay the
59 condemn's attorney's fees and court costs.

2 523.125. If any condemner fails to initiate construction, improvement, or otherwise
3 fails to utilize the condemned property for the stated public use within forty-eight months
4 of its acquisition, the former owner of the property or a beneficiary or an heir, if a
5 beneficiary or heir has been designated for this purpose, shall have the right of first refusal
6 to reacquire the property for the compensated amount or the fair market value of the
7 property, whichever is less. The provisions of this section shall not apply to the state
8 highways and transportation commission. The state highways and transportation
9 commission shall be governed by the time frame delineated in section 226.297, RSMo.

2 523.205. 1. Any public agency as defined in section 523.200 which is required, as a
3 condition to the receipt of federal funds, to give relocation assistance to any displaced person is
4 hereby authorized and directed to give similar relocation assistance to displaced persons when
5 the property involved is being acquired for the same public purpose through the same procedures,
6 and is being purchased solely through expenditure of state or local funds.

7 2. The governing body of any city, or agency thereof, prior to approval of a plan, project
8 or area for redevelopment under the operation of chapter 99, RSMo, chapter 100, RSMo, or
9 chapter 353, RSMo, or any other political subdivision initiating condemnation proceedings,
10 which proposes or includes within its provisions or necessitates displacement of persons, when
11 such displacement is not subject to the provisions of the Federal Uniform Relocation and Real
12 Property Acquisition Policies Act of 1970 (42 U.S.C. sections 4601 to 4655, as amended) or
13 subsection 1 of this section, shall establish by ordinance or rule a relocation policy which shall
14 include, but not be limited to, the provisions and requirements of subsections 2 to 15 of this
section, or in lieu thereof, such relocation policy shall contain provisions and requirements which

15 are equivalent to the requirements of the Federal Uniform Relocation Assistance and Real
16 Property Acquisition Policies Act of 1970 (42 U.S.C. sections 4601 to 4655, as amended).

17 3. As used in this section, the following terms shall mean:

18 (1) "Business", any lawful activity that is conducted:

19 (a) Primarily for the purchase, sale or use of personal or real property or for the
20 manufacture, processing or marketing of products or commodities; or

21 (b) Primarily for the sale of services to the public;

22 (2) "Decent, safe and sanitary dwelling", a dwelling which meets applicable housing and
23 occupancy codes. The dwelling shall:

24 (a) Be structurally sound, weathertight and in good repair;

25 (b) Contain a safe electrical wiring system;

26 (c) Contain an adequate heating system;

27 (d) Be adequate in size with respect to the number of rooms needed to accommodate the
28 displaced person; and

29 (e) For a handicapped person, be free of any barriers which would preclude reasonable
30 ingress, egress or use of the dwelling;

31 (3) "Handicapped person", any person who is deaf, legally blind or orthopedically
32 disabled to the extent that acquisition of another residence presents a greater burden than other
33 persons would encounter or to the extent that modifications to the replacement residence would
34 be necessary;

35 (4) "Initiation of negotiations", the delivery of the initial written offer of just
36 compensation by the acquiring entity, to the owner of the real property, to purchase such real
37 property for the project, or the notice to the person that he will be displaced by rehabilitation or
38 demolition;

39 (5) "Person", any individual, family, partnership, corporation, or association.

40 4. Every urban redevelopment corporation acquiring property within a redevelopment
41 area shall submit a relocation plan as part of the redevelopment plan.

42 5. Unless the property acquisition under the operation of chapter 99, RSMo, chapter 100,
43 RSMo, or chapter 353, RSMo, is subject to federal relocation standards or subsection 1 of this
44 section, the relocation plan shall provide for the following:

45 (1) Payments to all eligible displaced persons, as defined, who occupied the property to
46 be acquired for not less than ninety days prior to the initiation of negotiations who are required
47 to vacate the premises;

48 (2) A program for identifying special needs of displaced persons with specific
49 consideration given to income, age, size of family, nature of business, availability of suitable
50 replacement facilities and vacancy rates of affordable facilities;

51 (3) A program for referrals of displaced persons with provisions for a minimum of three
52 decent, safe and sanitary housing referrals for residential persons or suitable referral sites for
53 displaced businesses, a minimum of ninety days' notice of referral sites for handicapped
54 displaced persons and sixty days' notice of referral sites for all other displaced persons prior to
55 the date such displaced persons are required to vacate the premises, and arrangements for
56 transportation to inspect referral sites; and

57 (4) Every displaced person shall be given a ninety-day notice to vacate, prior to the date
58 such displaced person is required to vacate the premises.

59 6. All displaced residential persons eligible for payments shall be provided with
60 relocation payments based upon one of the following, at the option of the person:

61 (1) A five-hundred-dollar fixed payment; or

62 (2) Actual reasonable costs of relocation including actual moving costs, utility deposits,
63 key deposits, storage of personal property up to one month, utility transfer and connection fees
64 and other initial rehousing deposits including first and last month's rent and security deposit.

65 7. All displaced businesses eligible for payments shall be provided with relocation
66 payments based upon the following, at the option of the business:

67 (1) A one-thousand-five-hundred-dollar fixed payment; or

68 (2) Actual costs of moving including costs for packing, crating, disconnection,
69 dismantling, reassembling and installing all personal equipment and costs for relettering similar
70 signs and similar replacement stationery.

71 8. If a displaced person demonstrates the need for an advance relocation payment, in
72 order to avoid or reduce a hardship, the developer or public agency shall issue the payment
73 subject to such safeguards as are appropriate to ensure that the objective of the payment is
74 accomplished. Payment for a satisfactory claim shall be made within thirty days following
75 receipt of sufficient documentation to support the claim. All claims for relocation payment shall
76 be filed with the displacing agency within six months after:

77 (1) For tenants, the date of displacement;

78 (2) For owners, the date of displacement or the final payment for the acquisition of the
79 real property, whichever is later.

80 9. Any displaced person, who is also the owner of the premises, may waive relocation
81 payments as part of the negotiations for acquisition of the interest held by such person. Such
82 waiver shall be in writing, shall disclose the person's knowledge of the provisions of this section
83 and his entitlement to payment and shall be filed with the acquiring public agency.

84 10. All persons eligible for relocation benefits shall be notified in writing of the
85 availability of such relocation payments and assistance, with such notice to be given concurrently
86 with the notice of referral sites as required in subdivision (3) of subsection 5 of this section.

87 11. Any urban redevelopment corporation, its assigns or transferees, which have been
88 provided any assistance under the operation of chapter 99, RSMo, chapter 100, RSMo, chapter
89 353, RSMo, or this chapter, with land acquisition by the local governing body, shall be required
90 to make a report to the local governing body or appropriate public agency which shall include,
91 but not be limited to, the addresses of all occupied residential buildings and structures within the
92 redevelopment area and the names and addresses of persons displaced by the redeveloper and
93 specific relocation benefits provided to each person, as well as a sample notice provided to each
94 person.

95 12. An urban redevelopment corporation which fails to comply with the relocation
96 requirements provided in this section shall not be eligible for tax abatement as provided for in
97 chapter 353, RSMo.

98 13. The requirements set out in this section shall be considered minimum standards. In
99 reviewing any proposed relocation plan under the operation of chapter 99, RSMo, chapter 100,
100 RSMo, or chapter 353, RSMo, the local governing body or public agency shall determine the
101 adequacy of the proposal and may require additional elements to be provided.

102 14. Relocation assistance shall not be provided to any person who purposely resides or
103 locates his business in a redevelopment area solely for the purpose of obtaining relocation
104 benefits.

105 15. The provisions of sections 523.200 and 523.205 shall apply to land acquisitions
106 under the operation of chapter 99, RSMo, chapter 100, RSMo, or chapter 353, RSMo, filed for
107 approval, approved or amended on or after August 31, 1991, **or any other land acquisition**
108 **obtained under the provisions of this chapter.**

Section B. The enactment of section 523.094 of section A of this act shall become
2 effective only upon approval by the voters both to amend section 26 of article I of the
3 Constitution of Missouri to provide that private property may only be taken when necessary for
4 the possession, occupation, or enjoyment of land by the public, or by public agencies, utilities,
5 or common carriers, and to repeal section 21 of article VI of the Constitution of Missouri. The
6 secretary of state shall notify the revisor of statutes within thirty days of the effective date of both
7 such actions.

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