

SECOND REGULAR SESSION
[PERFECTED]
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 2005
101ST GENERAL ASSEMBLY

3627H.02P

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 393.170, 523.010, 523.039, 523.040, and 523.060, RSMo, and to enact in lieu thereof five new sections relating to eminent domain for certain utilities.

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

Section A. Sections 393.170, 523.010, 523.039, 523.040, and 523.060, RSMo, are
2 repealed and five new sections enacted in lieu thereof, to be known as sections 393.170,
3 523.010, 523.039, 523.040, and 523.060, to read as follows:

393.170. 1. No gas corporation, electrical corporation, water corporation or sewer
2 corporation shall begin construction of a gas plant, electric plant, water system or sewer
3 system, other than an energy generation unit that has a capacity of one megawatt or less,
4 without first having obtained the permission and approval of the commission.

5 2. No such corporation shall exercise any right or privilege under any franchise
6 hereafter granted, or under any franchise heretofore granted but not heretofore actually
7 exercised, or the exercise of which shall have been suspended for more than one year, without
8 first having obtained the permission and approval of the commission. Before such certificate
9 shall be issued a certified copy of the charter of such corporation shall be filed in the office of
10 the commission, together with a verified statement of the president and secretary of the
11 corporation, showing that it has received the required consent of the proper municipal
12 authorities.

13 3. The commission shall have the power to grant the permission and approval herein
14 specified whenever it shall after due hearing determine that such construction or such exercise
15 of the right, privilege or franchise is necessary or convenient for the public service. The
16 commission may by its order impose such condition or conditions as it may deem reasonable

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.

17 and necessary. Unless exercised within a period of two years from the grant thereof, **any**
18 authority conferred by [~~such certificate of convenience and necessity issued by~~] **this section**
19 **by** the commission shall be null and void.

20 **4. For purposes of the application of this section to any approval, permission,**
21 **right, privilege, or franchise for electrical corporations, the term "public service" shall**
22 **mean the delivery of electrical service to consumers in this state, and the exercise of any**
23 **authority conferred by the commission shall mean the actual commencement of**
24 **construction on such electrical system. No such approval, permission, or certificate of**
25 **convenience and necessity shall be granted by the commission without the prior**
26 **approval of the county commission for each county through which the electrical system**
27 **seeking approval shall pass. Any transmission line providing less than fifty percent of**
28 **its electrical load to consumers in this state shall not be considered public service.**

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 section, the authority for an electrical corporation as**
67 **defined in section 386.020 to condemn property shall not extend to the construction or**
68 **operation of transmission lines that provide less than fifty percent of their electrical load**
69 **to end user electrical consumers in this state.**

523.039. 1. In all condemnation 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;

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

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

20 **2. For condemnation of any agricultural or horticultural property by an**
21 **electrical corporation as defined in section 386.020, except for an electrical corporation**
22 **operating under a cooperative business plan as described in section 393.110, just**
23 **compensation shall be an amount equivalent to fair market value multiplied by one**
24 **hundred fifty percent, as determined by the court.**

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, shall appoint three disinterested
3 commissioners, who shall be residents of the county in which the real estate or a part
4 thereof is situated, and in any city not within a county, any county with a charter form of
5 government and with more than one million inhabitants, or any county with a charter form of

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

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

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

40 4. **In any condemnation proceeding involving agricultural or horticultural**
41 **property, at least one of the disinterested commissioners appointed by the court shall be**

42 **a farmer who has been engaged in farming, as defined in section 350.010, for a**
43 **minimum of ten years in the county where such property is situated.**

523.060. 1. Any plaintiff or defendant, individual or corporate, shall have the right of
2 trial by jury of twelve persons, if either party file exceptions to the award of commissioners in
3 any condemnation case.

4 2. Such jury shall use the definition of fair market value provided for in subdivision
5 (1) of section 523.001.

6 **3. In any condemnation proceeding commenced by an electrical corporation as**
7 **defined in section 386.020, except for an electrical corporation operating under a**
8 **cooperative business plan as described in section 393.110, if the amount awarded is**
9 **greater than the offer made by the condemning authority pursuant to section 523.253,**
10 **the court may award attorney's fees to the property owner.**

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