

SENATE BILL NO. 1211

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR BEAN.

5524S.03I

ADRIANE D. CROUSE, Secretary

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,
2 and 523.060, RSMo, are repealed and five new sections enacted
3 in lieu thereof, to be known as sections 393.170, 523.010,
4 523.039, 523.040, and 523.060, to read as follows:

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

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

EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

18 has received the required consent of the proper municipal
19 authorities.

20 3. The commission shall have the power to grant the
21 permission and approval herein specified whenever it shall
22 after due hearing determine that such construction or such
23 exercise of the right, privilege or franchise is necessary
24 or convenient for the public service. The commission may by
25 its order impose such condition or conditions as it may deem
26 reasonable and necessary. Unless exercised within a period
27 of two years from the grant thereof, **any** authority conferred
28 by [such certificate of convenience and necessity issued by]
29 **this section by** the commission shall be null and void.

30 4. **For purposes of the application of this section to**
31 **any approval, permission, right, privilege, or franchise for**
32 **electrical corporations, the term "public service" shall**
33 **mean the delivery of electrical service to consumers in this**
34 **state, and the exercise of any authority conferred by the**
35 **commission shall mean the actual commencement of**
36 **construction on such electrical system. No such approval,**
37 **permission, or certificate of convenience and necessity**
38 **shall be granted by the commission without the prior**
39 **approval of the county commission for each county through**
40 **which the electrical system seeking approval shall pass.**
41 **Any transmission line providing less than fifty percent of**
42 **its electrical load to consumers in this state shall not be**
43 **considered public service.**

523.010. 1. In case land, or other property, is
2 sought to be appropriated by any road, railroad, street
3 railway, telephone, telegraph or any electrical corporation
4 organized for the manufacture or transmission of electric
5 current for light, heat or power, including the
6 construction, when that is the case, of necessary dams and

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

39 establishment, erection and maintenance of such road,
40 railroad, street railway, telephone, telegraph line, or
41 electrical line including damages from the construction and
42 maintenance of necessary dams and the condemnation of land
43 submerged thereby, and the construction and maintenance of
44 appurtenant canals, flumes, tunnels and tailraces and the
45 erection and maintenance of necessary electric steam
46 powerhouses, hydroelectric powerhouses and electric
47 substations, or oil, pipeline, or gas line over or
48 underneath the surface of such lands; to which petition the
49 owners of any or all as the plaintiff may elect of such
50 parcels as lie within the county or circuit may be made
51 parties defendant by names if the names are known, and by
52 the description of the unknown owners of the land therein
53 described if their names are unknown.

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

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

67 4. Except as provided in subsection 5 of this section,
68 nothing in this chapter shall be construed to give a public
69 utility, as defined in section 386.020, or a rural electric
70 cooperative, as provided in chapter 394, the power to

71 condemn property which is currently used by another provider
72 of public utility service, including a municipality or a
73 special purpose district, when such property is used or
74 useful in providing utility services, if the public utility
75 or cooperative seeking to condemn such property, directly or
76 indirectly, will use or proposes to use the property for the
77 same purpose, or a purpose substantially similar to the
78 purpose for which the property is being used by the provider
79 of the public utility service.

80 5. A public utility or a rural electric cooperative
81 may only condemn the property of another provider of public
82 utility service, even if the property is used or useful in
83 providing utility services by such provider, if the
84 condemnation is necessary for the public purpose of
85 acquiring a nonexclusive easement or right-of-way across the
86 property of such provider and only if the acquisition will
87 not materially impair or interfere with the current use of
88 such property by the utility or cooperative and will not
89 prevent or materially impair such provider of public utility
90 service from any future expansion of its facilities on such
91 property.

92 6. If a public utility or rural electric cooperative
93 seeks to condemn the property of another provider of public
94 utility service, and the conditions in subsection 4 of this
95 section do not apply, this section does not limit the
96 condemnation powers otherwise possessed by such public
97 utility or rural electric cooperative.

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

103 **8. For purposes of this section, the authority for an**
104 **electrical corporation as defined in section 386.020 to**
105 **condemn property shall not extend to the construction or**
106 **operation of transmission lines that provide less than fifty**
107 **percent of their electrical load to end user electrical**
108 **consumers in this state.**

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

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

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

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

27 more than fifty percent of the entity in order to be within
28 the family line of ownership for the purposes of this
29 subdivision. The property owner shall have the burden of
30 proving to the commissioners or jury that the property has
31 been owned within the same family for fifty or more years.

32 **2. For condemnation of any agricultural or**
33 **horticultural property by an electrical corporation as**
34 **defined in section 386.020, just compensation shall be an**
35 **amount equivalent to fair market value multiplied by one**
36 **hundred fifty percent.**

523.040. 1. The court, or judge thereof in vacation,
2 on being satisfied that due notice of the pendency of the
3 petition has been given, shall appoint three disinterested
4 commissioners, who shall be residents of the county in which
5 the real estate or a part thereof is situated, and in any
6 city not within a county, any county with a charter form of
7 government and with more than one million inhabitants, or
8 any county with a charter form of government and with more
9 than six hundred thousand but fewer than seven hundred
10 thousand inhabitants at least one of the commissioners shall
11 be either a licensed real estate broker or a state-licensed
12 or state-certified real estate appraiser, to assess the
13 damages which the owners may severally sustain by reason of
14 such appropriation, who, within forty-five days after
15 appointment by the court, which forty-five days may be
16 extended by the court to a date certain with good cause
17 shown, after applying the definition of fair market value
18 contained in subdivision (1) of section 523.001, and after
19 having viewed the property, shall return to the clerk of
20 such court, under oath, their report in duplicate of such
21 assessment of damages, setting forth the amount of damages
22 allowed to the person or persons named as owning or claiming

23 the tract of land condemned, and should more than one tract
24 be condemned in the petition, then the damages allowed to
25 the owner, owners, claimant or claimants of each tract,
26 respectively, shall be stated separately, together with a
27 specific description of the tracts for which such damages
28 are assessed; and the clerk shall file one copy of said
29 report in his office and record the same in the order book
30 of the court, and he shall deliver the other copy, duly
31 certified by him, to the recorder of deeds of the county
32 where the land lies (or to the recorder of deeds of the city
33 of St. Louis, if the land lies in said city) who shall
34 record the same in his office, and index each tract
35 separately as provided in section 59.440, and the fee for so
36 recording shall be taxed by the clerk as costs in the
37 proceedings; and thereupon such company shall pay to the
38 clerk the amount thus assessed for the party in whose favor
39 such damages have been assessed; and on making such payment
40 it shall be lawful for such company to hold the interest in
41 the property so appropriated for the uses prescribed in this
42 section; and upon failure to pay the assessment, the court
43 may, upon motion and notice by the party entitled to such
44 damages, enforce the payment of the same by execution,
45 unless the said company shall, within ten days from the
46 return of such assessment, elect to abandon the proposed
47 appropriation of any parcel of land, by an instrument in
48 writing to that effect, to be filed with the clerk of the
49 court, and entered on the minutes of the court, and as to so
50 much as is thus abandoned, the assessment of damages shall
51 be void.

52 2. Prior to the issuance of any report under
53 subsection 1 of this section, a commissioner shall notify
54 all parties named in the condemnation petition no less than

55 ten days prior to the commissioners' viewing of the property
56 of the named parties' opportunity to accompany the
57 commissioners on the commissioners' viewing of the property
58 and of the named parties' opportunity to present information
59 to the commissioners.

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

63 **4. In any condemnation proceeding involving**
64 **agricultural or horticultural property, at least one of the**
65 **disinterested commissioners appointed by the court shall be**
66 **a farmer who has been engaged in farming for a minimum of**
67 **ten years in the county where such property is situated.**

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

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

7 **3. In any condemnation proceeding commenced by an**
8 **electrical corporation as defined in section 386.020, if the**
9 **amount awarded is greater than the offer made by the**
10 **condemning authority pursuant to section 523.253, the court**
11 **may award attorney's fees to the property owner.**

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