

SECOND REGULAR SESSION

HOUSE BILL NO. 1449

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE LEWIS (6).

4249H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 393.170 and 523.010, RSMo, and to enact in lieu thereof three new sections relating to electric utilities.

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

Section A. Sections 393.170 and 523.010, RSMo, are repealed and three new sections
2 enacted in lieu thereof, to be known as sections 393.170, 393.172, and 523.010, to read as
3 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, authority
18 conferred by such certificate of convenience and necessity issued by the commission shall be
19 null and void.

20 **4. (1) The provisions of this subsection shall apply when the permission and**
21 **approval sought from the commission under subsection 1 of this section is for the**
22 **construction of electric transmission facilities approved by a regional transmission**
23 **operator. To the greatest extent practical, such electric transmission facilities shall be**
24 **designed, consistent with electric industry standards, to utilize a multi-circuit**
25 **configuration, be sited with or along existing above-ground infrastructure, or replace**
26 **or upgrade existing above-ground infrastructure, whether or not the existing electric**
27 **transmission facility infrastructure utilized is owned by an electrical corporation that**
28 **owns in-service electric transmission facilities in this state that are under the functional**
29 **control of a regional transmission operator. Electric transmission facilities need not be**
30 **designed as provided in the immediately preceding sentence if the commission**
31 **determines in a proceeding pursuant to which permission and approval is sought**
32 **under subsection 1 of this section that such a design is inconsistent with electric industry**
33 **standards, is inconsistent with the reliability basis given for the electric transmission**
34 **facilities project, or is not in the best interest of the electrical corporation's customers or,**
35 **to the extent the electrical corporation does not directly serve retail customers, the**
36 **interests of the electric customers whose retail rates will reflect the majority of the costs**
37 **of the electric transmission facilities to-be-constructed. In addition, to the extent such**
38 **electric transmission facilities will be sited with or along or will replace or upgrade**
39 **existing above-ground electrical infrastructure that is not owned by an entity seeking**
40 **permission and approval pursuant to an application filed under subsection 1 of this**
41 **section or by its affiliate, the entity or entities that will own the new electric transmission**
42 **facilities subject to the application shall obtain from the underlying fee owners**
43 **independent real estate rights necessary to accommodate the installation and operation**
44 **thereof. Nothing in this subdivision shall relieve such entity or entities of the obligations**
45 **contained in sections 523.039 or 523.256, to the extent those obligations would otherwise**
46 **apply.**

47 **(2) In addition to the design requirements in subdivision (1) of this subsection,**
48 **each electrical corporation seeking permission and approval under subsection 1 of this**
49 **section shall competitively bid the major construction components of each project for**
50 **which permission and approval is sought and shall utilize competitive sourcing**
51 **strategies for all related major materials.**

52 **(3) Only electrical corporations that own in-service electric transmission**
53 **facilities in this state that are under the functional control of a regional transmission**

54 operator and to which the electric transmission facilities subject to the application will
55 connect, either initially or once construction of all electric transmission facilities
56 approved by the regional transmission operator as of the time of the commission's
57 approval of the application is completed, may file applications with the commission for
58 permission and approval to construct electric transmission facilities described in this
59 subsection. Within ninety days following approval of the construction of electric
60 transmission facilities by the applicable regional transmission operator, an electric
61 corporation seeking permission and approval for electric transmission facilities under
62 the provisions of this subsection may notify the commission that it will not construct any
63 or some portion of the facilities approved. If such notice is given and indicates the
64 notifying electrical corporation will not construct any of the facilities approved, the
65 commission may grant permission and approval for such facilities' construction to any
66 other electrical corporation. If such notice indicates that it will assign all or a portion of
67 the facilities approved to another electrical corporation, the commission may grant
68 permission and approval for the facilities that were assigned to the assignee electrical
69 corporation and such electrical corporation's construction of the facilities shall be
70 subject to this subsection.

71 (4) This subsection shall not limit the right of any electrical corporation to seek
72 permission and approval from the commission to construct, operate, and maintain
73 electric transmission facilities in this state that will not initially connect to electric
74 transmission facilities in this state that are not under the functional control of a regional
75 transmission operator. This subsection shall also not limit the right of any electrical
76 corporation, any municipal utility operating under chapter 91, any joint electric utility
77 commission operating under chapter 393, any rural electric cooperative organized or
78 operating under chapter 394, any corporation organized on a nonprofit or a cooperative
79 basis as described in subsection 1 of section 394.200, or any electrical corporation
80 operating under the not-for-profit cooperative business plan as described in subsection 2
81 of section 393.110 to construct, operate, and maintain electric transmission facilities in
82 this state that are not under the functional control of a regional transmission operator.

83 (5) In considering applications under this section, the commission shall take into
84 account the importance of construction of electric transmission facilities in the state
85 needed to support the state's economy, the benefits of electric transmission facility
86 construction to customers, and the importance of transmission facility construction in
87 ensuring reliable electric service in the state in the twenty-first century and beyond.

88 (6) For the purposes of this subsection, the following terms shall mean:

89 **(a) "Electric transmission facilities", a transmission line that is designed and**
90 **constructed with the capability of being safely and reliably energized at one hundred**
91 **kilovolts or more and associated transmission facilities, including substations;**

92 **(b) "Regional transmission operator", a regional transmission organization,**
93 **independent system operator, or equivalent entity approved by the Federal Energy**
94 **Regulatory Commission or its successor agency that exercises functional control over**
95 **electric transmission facilities located within this state.**

393.172. 1. On or before March 31, 2025, the commission shall adopt rules
2 **creating standards for construction activities occurring wholly or partially on privately**
3 **owned agricultural land that are applicable to electrical corporations constructing an**
4 **electric transmission line under subsection 1 of section 393.170 for which permission is**
5 **sought from the commission on or after the effective date of this section.**

6 **2. The rules created under subsection 1 of this section shall address the**
7 **following:**

- 8 **(1) Landowner communication expectations;**
- 9 **(2) Transmission structure and design expectations;**
- 10 **(3) Wet-weather construction and remediation practices;**
- 11 **(4) Agricultural mitigation and restoration practices;**
- 12 **(5) Construction-related tree and brush clearing;**
- 13 **(6) Use and restoration of field entrances and temporary roads; and**
- 14 **(7) Best practices with respect to erosion prevention.**

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.**

85 **10. Subject to subsection 8 of this section, but not withstanding subsection 9 of**
86 **this section, the authority of any corporation set forth in subsection 1 of this section to**
87 **condemn property shall extend to acquisition rights needed to construct, operate, and**
88 **maintain collection lines, distribution lines, transmission lines, communications lines,**
89 **substations, switchyards, and other facilities needed to collect and deliver energy**

90 **generated or manufactured by the facilities described in subsection 9 of this section to**
91 **the distribution or transmission grid.**

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