

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1876
101ST GENERAL ASSEMBLY

3626H.09C

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 393.170, 523.039, 523.040, and 523.262, RSMo, and to enact in lieu thereof four 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Section A. Sections 393.170, 523.039, 523.040, and 523.262, RSMo, are repealed
2 and four new sections enacted in lieu thereof, to be known as sections 393.170, 523.039,
3 523.040, and 523.262, 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. **Before the**
5 **commission issues an approval under this subsection, the corporation shall provide the**
6 **commission with a resolution of support passed by the county commission of each**
7 **county in which the plant or system will operate. Before providing the commission with**
8 **the resolution, the county commission shall consider the impact of the utility on the**
9 **county including, but not limited to, the economic value of the utility to the county, and**
10 **any other consideration impacting the county.**

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

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 corporation, showing that it has received the required consent of the proper municipal
18 authorities.

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

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 that the property has been owned within the same family for fifty or more years.

20 **2. (1) Just compensation for any agricultural or horticultural land shall be one**
21 **hundred fifty percent of the fair market value.**

22 **(2) In condemnation proceedings, if the judgment is higher than the initial offer**
23 **required under this chapter, the utility shall be required to pay the attorney's fees of the**
24 **other party.**

25 **(3) This subsection shall not apply to any rural electric cooperative organized or**
26 **operating under the provisions of chapter 394, or to any corporation organized on a**
27 **nonprofit or a cooperative basis as described in subsection 1 of section 394.200, or to any**

28 **electrical corporation operating under a cooperative business plan as described in**
29 **subsection 2 of section 393.110.**

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 a condemnation proceeding for land that is classified as agricultural or**
41 **horticultural, of the three court-appointed, disinterested commissioners designated in**
42 **subsection 1 of this section, one shall be a farmer who has been farming in the county for**
43 **a minimum of ten years.**

523.262. 1. Except as set forth in subsection 2 of this section, the power of eminent
2 domain shall only be vested in governmental bodies or agencies whose governing body is
3 elected or whose governing body is appointed by elected officials or in an urban
4 redevelopment corporation operating pursuant to a redevelopment agreement with the
5 municipality for a particular redevelopment area, which agreement was executed prior to or
6 on December 31, 2006.

7 2. A private utility company, public utility, rural electric cooperative, municipally
8 owned utility, pipeline, railroad or common carrier shall have the power of eminent domain as
9 may be granted pursuant to the provisions of other sections of the revised statutes of Missouri.
10 For the purposes of this section, the term "common carrier" shall not include motor carriers,
11 contract carriers, or express companies. Where a condemnation by such an entity results in a
12 displaced person, as defined in section 523.200, the provisions of subsections 3 and 6 to 10 of
13 section 523.205 shall apply unless the condemning entity is subject to the relocation
14 assistance provisions of the federal Uniform Relocation Assistance Act.

15 3. Any entity with the power of eminent domain and pursuing the acquisition of
16 property for the purpose of constructing a power generation facility after December 31, 2006,
17 after providing notice in a newspaper of general circulation in the county where the facility is
18 to be constructed, shall conduct a public meeting disclosing the purpose of the proposed
19 facility prior to making any offer to purchase property in pursuit thereof or, alternatively, shall
20 provide the property owner with notification of the identity of the condemning authority and
21 the proposed purpose for which the condemned property shall be used at the time of making
22 the initial offer.

23 **4. (1) Notwithstanding the provisions of subsection 2 of this section, no entity**
24 **shall have the power of eminent domain under the provisions of this section for the**
25 **purpose of constructing above-ground merchant lines.**

26 **(2) For the purpose of this subsection, the following terms mean:**

27 **(a) "Entity", a utility company whose merchant line will not provide at least fifty**
28 **percent of its electricity to end-use customers in Missouri or retail utility customers in**
29 **Missouri, or does not collect its costs to provide service under a regional transmission**

30 **organization tariff, regardless of whether it has received a certificate of convenience and**
31 **necessity from the public service commission under section 393.170;**

32 **(b) "Merchant line", a high-voltage direct current electric transmission line that**
33 **does not provide for the erection of electric substations, which substations are necessary**
34 **to accommodate both the purchase and sale to persons located in this state of electricity**
35 **generated or transmitted by such entity.**

36 **(3) This subsection shall apply to any property or easement acquisition started**
37 **on or after August 28, 2022.**

38 **(4) This subsection shall not apply to any rural electric cooperative organized or**
39 **operating under the provisions of chapter 394, or to any corporation organized on a**
40 **nonprofit or a cooperative basis as described in subsection 1 of section 394.200, or to any**
41 **electrical corporation operating under a cooperative business plan as described in**
42 **subsection 2 of section 393.110.**

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