

SECOND REGULAR SESSION

HOUSE BILL NO. 1903

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE WALKER (3).

4060H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 393.170, 523.001, 523.039, 523.250, and 523.262, RSMo, and to enact in lieu thereof six new sections relating to infrastructure development.

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

Section A. Sections 393.170, 523.001, 523.039, 523.250, and 523.262, RSMo, are
2 repealed and six new sections enacted in lieu thereof, to be known as sections 393.170, 523.001,
3 523.039, 523.250, 523.262, and 523.263 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 system
3 without first having obtained the permission and approval of the commission. **No gas
4 corporation, electrical corporation, water corporation, or sewer corporation shall seek
5 permission and approval of the commission before providing at least one hundred twenty
6 days' notice to all affected property owners.**

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

14 3. **Before any certificate is issued under this section, such corporation shall provide
15 the approval of each affected county commission to the commission. A county commission**

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.

16 **may grant approval which shall be evidenced by a vote in favor of such corporation's**
 17 **proposal. A tied vote shall be deemed a vote in disapproval.**

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

523.001. For the purposes of this chapter, the following terms shall mean:

2 (1) **"Century property", real property owned within the same family or business**
 3 **entity with fewer than one hundred employees for at least one hundred continuous years;**

4 (2) **"Century value", the fair market value of a century property;**

5 (3) **"Collocate", to share a location or pole.**

6 (4) "Fair market value", the value of the property taken after considering comparable
 7 sales in the area, capitalization of income, and replacement cost less depreciation, singularly or
 8 in combination, as appropriate, and additionally considering the value of the property based upon
 9 its highest and best use, using generally accepted appraisal practices. If less than the entire
 10 property is taken, fair market value shall mean the difference between the fair market value of
 11 the entire property immediately prior to the taking and the fair market value of the remaining or
 12 burdened property immediately after the taking;

13 ~~[(2)]~~ (5) "Heritage value", the value assigned to any real property, including but not
 14 limited to real property owned by a business enterprise with fewer than one hundred employees,
 15 that has been owned within the same family for fifty or more years, such value to be fifty percent
 16 of fair market value;

17 ~~[(3)]~~ (6) "Homestead taking", any taking of a dwelling owned by the property owner and
 18 functioning as the owner's primary place of residence or any taking of the owner's property
 19 within three hundred feet of the owner's primary place of residence ~~[that prevents the owner from~~
 20 ~~utilizing the property in substantially the same manner as it is currently being utilized] ;~~

21 (7) **"Structure type", an agricultural, residential, commercial, industrial, or any**
 22 **other type of building; or a mechanical installation; or machinery or apparatus.**

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]~~ **five**
 3 following subdivisions, whichever yields the highest compensation, as applicable to the
 4 particular type 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 fair
7 market value of such property multiplied by one hundred twenty-five percent; ~~[or]~~

8 **(3) For any upgrade or addition to an existing easement after December 31, 2018,**
9 **an amount mutually agreed upon by the property owner or such owner's legally competent**
10 **agent. Such amount shall cover any construction damages to the property;**

11 ~~[(3)]~~ (4) For condemnations of property that result in any taking ~~[that prevents the owner~~
12 ~~from utilizing property in substantially the same manner as it was currently being utilized on the~~
13 ~~day of the taking and]~~ involving property owned within the same family for fifty or more years,
14 an amount equivalent to the sum of the fair market value and heritage value. For the purposes
15 of this subdivision, family ownership of property may be established through evidence of
16 ownership by children, grandchildren, siblings, or nephews or nieces of the family member
17 owning the property fifty years prior to the taking; and in addition, may be established through
18 marriage or adoption by such family members. If any entity owns the real property, members
19 of the family shall have an ownership interest in more than fifty percent of the entity in order to
20 be within the family line of ownership for the purposes of this subdivision. The property owner
21 shall have the burden of proving to the commissioners or jury that the property has been owned
22 within the same family for fifty or more years; **or**

23 **(5) For condemnations that, after December 31, 2018, result in any taking involving**
24 **century property, an amount equivalent to the sum of the fair market value and century**
25 **value. For the purposes of this subdivision, family ownership of property may be**
26 **established through evidence of ownership by children, grandchildren, siblings, or**
27 **nephews or nieces of the family member owning the property one hundred years prior to**
28 **the taking and may be established through marriage or adoption by such family members.**
29 **If any entity owns the real property, members of the family shall have an ownership**
30 **interest in one hundred percent of the entity in order to be within the family line of**
31 **ownership for the purposes of this subdivision. The property owner shall have the burden**
32 **of proving to the commissioners or jury that the property has been owned within the same**
33 **family for one hundred or more years.**

34 **2. In determining the appropriate compensation to be awarded to the property**
35 **owner under subsection 1 of this section, the property owner shall be allowed to present**
36 **evidence and argue the value of the future use of the property that is to be taken.**

523.250. 1. At least ~~[sixty]~~ **one hundred twenty** days before filing of a condemnation
2 petition seeking to acquire an interest in real property, the condemning authority shall provide
3 the owner of record of such property with a written notice concerning the intended acquisition.
4 Such notice shall include:

- 5 (1) Identification of the interest in real property to be acquired and a statement of the
6 legal description or commonly known location of the property;
- 7 (2) The purpose or purposes for which the property is to be acquired;
- 8 (3) A statement that the property owner has the right to:
- 9 (a) Seek legal counsel at the owner's expense;
- 10 (b) Make a counteroffer and engage in further negotiations;
- 11 (c) Obtain such owner's own appraisal of just compensation;
- 12 (d) Have just compensation determined preliminarily by court-appointed condemnation
13 commissioners and, ultimately, by a jury;
- 14 (e) Seek assistance from the office of the ombudsman for property rights created under
15 section 523.277;
- 16 (f) Contest the right to condemn in the condemnation proceeding; and
- 17 (g) Exercise the rights to request vacation of an easement under the procedures and
18 circumstances provided for in section 527.188.

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20 An owner may waive the requirements of this subsection prescribed above in a writing executed
21 by the owner.

22 2. The written notice required by this section shall be deposited in the United States mail,
23 certified or registered, and with postage prepaid, addressed to the owner of record as listed in the
24 office of the city or county assessor for the city or county in which the property is located. The
25 receipt issued to the condemning authority by the United States Post Office for certified or
26 registered mail shall constitute proof of compliance with this notice requirement; provided,
27 however, that nothing in this section shall preclude a condemning authority from proving
28 compliance with this notice requirement by other competent evidence.

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 elected
3 or whose governing body is appointed by elected officials or in an urban redevelopment
4 corporation operating pursuant to a redevelopment agreement with the municipality for a
5 particular redevelopment area, which agreement was executed prior to or on December 31, 2006.

6 2. A private utility company, public utility, rural electric cooperative, municipally owned
7 utility, pipeline, railroad or common carrier shall have the power of eminent domain as may be
8 granted pursuant to the provisions of other sections of the revised statutes of Missouri, **except**
9 **such power shall not extend to a private utility for the construction of electrical lines and**
10 **infrastructure.** For the purposes of this section, the term "common carrier" shall not include
11 motor carriers, contract carriers, or express companies. Where a condemnation by such an entity
12 results in a displaced person, as defined in section 523.200, the provisions of subsections 3 and

13 6 to 10 of 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 property
16 for the purpose of constructing a power generation facility after December 31, 2006, after
17 providing notice in a newspaper of general circulation in the county where the facility is to be
18 constructed, shall conduct a public meeting disclosing the purpose of the proposed facility prior
19 to making any offer to purchase property in pursuit thereof or, alternatively, shall provide the
20 property owner with notification of the identity of the condemning authority and the proposed
21 purpose for which the condemned property shall be used at the time of making the initial offer.

**523.263. 1. This section shall be known as the “Electrical Corporation
2 Condemnation Act”.**

3 **2. For purposes of this section, “electrical corporation” has the same meaning as
4 that term is defined under section 386.020 but shall not include any electrical corporation
5 as defined under subsection 2 of section 393.110.**

6 **3. A condemnation proposal sought by an electrical corporation may be rejected
7 if an alternative route through state-owned land is possible.**

8 **4. Notwithstanding any other provision of this chapter to the contrary, electrical
9 corporations seeking to acquire land through condemnation shall be subject to the
10 following:**

11 **(1) If an easement along the proposed route exists and:**

12 **(a) The applying electrical corporation holds the easement, such electrical
13 corporation may upgrade the existing structure if it compensates the landowner with a
14 mutually agreed upon amount and repairs all construction damages to the landowner’s
15 satisfaction or the satisfaction of commissioners appointed under section 523.040; or**

16 **(b) The applying electrical corporation does not hold such easement, such electrical
17 corporation may collocate with any entity that holds the easement.**

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19 **If upgrades or collocation cannot be agreed upon, all parties shall be subject to binding
20 arbitration by an arbitrator of the landowner’s choice and at the expense of the applying
21 electrical corporation; or**

22 **(2) If an easement along the proposed route does not exist, routing shall follow
23 section or boundary lines unless an alternate route is negotiated with the landowner.**

24 **5. An easement shall be limited to its original structure type and use unless
25 renegotiated with the landowner.**

26 **6. If no easement route can be agreed upon through the provisions in this section,
27 the project shall be abandoned. The electrical corporation may reapply to the public**

28 **service commission under section 393.170 and to a court of competent jurisdiction no**
29 **sooner than five years after the date of abandonment.**

30 **7. Any electrical corporation seeking to acquire land or an interest therein under**
31 **subsection 4 of this section shall obtain a written easement agreement signed by at least**
32 **sixty percent of impacted property owners or their legally competent agents before taking**
33 **action on the land.**

34 **8. This section applies to all future routes and any routes with an outstanding**
35 **easement.**

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