

SECOND REGULAR SESSION

HOUSE BILL NO. 2005

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE HAFFNER.

3627H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 393.170, 523.039, and 523.040, RSMo, and to enact in lieu thereof three 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Section A. Sections 393.170, 523.039, and 523.040, RSMo, are repealed and three
2 new sections enacted in lieu thereof, to be known as sections 393.170, 523.039, and 523.040,
3 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.**

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

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 3. The commission shall have the power to grant the permission and approval herein
17 specified whenever it shall after due hearing determine that such construction or such exercise
18 of the right, privilege or franchise is necessary or convenient for the public service. The
19 commission may by its order impose such condition or conditions as it may deem reasonable
20 and necessary. Unless exercised within a period of two years from the grant thereof, authority
21 conferred by such certificate of convenience and necessity issued by the commission shall be
22 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**
21 **classified under a land value category established by the state tax commission under**
22 **section 137.021, beginning with one hundred fifty percent of the fair market value for**
23 **the most productive category and decreasing by five percent for each category**
24 **thereafter.**

25 **(2) This subsection shall not apply if just compensation under subdivision (2) or**
26 **(3) of subsection 1 of this section is greater than compensation under subdivision (1) of**
27 **this subsection.**

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

31 **electrical corporation operating under a cooperative business plan as described in**
32 **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, the three commissioners designated in subsection 1 of this section shall**
42 **have the following qualifications:**

43 (1) A county commissioner;

44 (2) A farmer who has been farming in the county for a minimum of ten years;

45 and

46 (3) A state-licensed or state-certified appraiser.

✓