

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1085
92ND GENERAL ASSEMBLY

Reported from the Committee on Conservation and Natural Resources March 18, 2004, with recommendation that the House Committee Substitute for House Bill No. 1085 Do Pass.

STEPHEN S. DAVIS, Chief Clerk

3654L.03C

AN ACT

To repeal sections 227.120, 523.010, 523.040, and 523.070, RSMo, and to enact in lieu thereof four new sections relating to the taking of property, with an emergency clause for a certain section.

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

Section A. Sections 227.120, 523.010, 523.040, and 523.070, RSMo, are repealed and
2 four new sections enacted in lieu thereof, to be known as sections 227.120, 523.010, 523.040,
3 and 523.070, to read as follows:

227.120. **1.** The state highways and transportation commission shall have power to
2 purchase, lease, or condemn, lands in the name of the state of Missouri for the following
3 purposes when necessary for the proper and economical construction and maintenance of state
4 highways:

5 (1) Acquiring the right-of-way for the location, construction, reconstruction, widening,
6 improvement or maintenance of any state highway or any part thereof;

7 (2) Acquiring bridges or sites therefor and ferries, including the rights and franchises for
8 the maintenance and operation thereof, over navigable streams, at such places as the state
9 highways and transportation commission shall have authority to construct, acquire or contribute
10 to the cost of construction of any bridge;

11 (3) Acquiring the right-of-way for the location, construction, reconstruction, widening,
12 improvement or maintenance of any highway ordered built by the bureau of public roads of the

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law. Matter in boldface type in the above law is proposed language.

13 Department of Agriculture of the United States government;

14 (4) Obtaining road building or road maintenance materials or plants for the manufacture
15 or production of such materials and acquiring the right-of-way thereto; also acquiring the
16 right-of-way to such plants as are privately owned when necessary for the proper and economical
17 construction of the state highway system;

18 (5) Changing gradients in any state highway;

19 (6) Establishing detours in connection with the location, construction, reconstruction,
20 widening, improvement or maintenance of any state highway or any part thereof;

21 (7) Changing the channels of any stream and providing for drainage ditches when
22 necessary for the proper construction or maintenance of any state highway;

23 (8) Eliminating grade crossings;

24 (9) Acquiring water supply and water power sites and necessary lands for use in
25 connection therewith, including rights-of-way to any such sites;

26 (10) Acquiring sites for garages and division offices and for storing materials, machinery
27 and supplies;

28 (11) Acquiring lands for sight distances along any state highway or any portion thereof
29 whenever necessary, and also acquiring lands within wyes formed by junctions of state highways,
30 or junctions of state highways and other public highways;

31 (12) Acquiring lands or interests therein for the purpose of depositing thereon excess
32 excavated, or other materials produced in the construction, reconstruction, widening,
33 improvement or maintenance of any state highway;

34 (13) Acquiring lands for any other purpose necessary for the proper and economical
35 construction of the state highway system for which the commission may have authority granted
36 by law. If condemnation becomes necessary, the commission shall have the power to proceed
37 to condemn such lands in the name of the state of Missouri, in accordance with the provisions
38 of chapter 523, RSMo, insofar as the same is applicable to the said state highways and
39 transportation commission, and the court or jury shall take into consideration the benefits to be
40 derived by the owner, as well as the damage sustained thereby. The state highways and
41 transportation commission also shall have the same authority to enter upon private lands to
42 survey and determine the most advantageous route of any state highway as granted, under section
43 388.210, RSMo, to railroad corporations.

44 **2. In any case in which the commission exercises eminent domain involving a taking**
45 **of real estate, the court, commissioners, and jury shall consider the restriction of or loss of**
46 **access to any adjacent highway as an element in assessing the damages. As used in this**
47 **subsection, "restriction of or loss of access" includes, but is not limited to, the prohibition**
48 **of making right or left turns into or out of the real estate involved, provided that such**

49 **access was present before the proposed improvement or taking.**

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, or
8 gas by means of pipes or pipelines laid underneath the surface of the ground, or other corporation
9 created under the laws of this state for public use, and such corporation and the owners cannot
10 agree upon the proper compensation to be paid, or in the case the owner is incapable of
11 contracting, be unknown, or be a nonresident of the state, such corporation may apply to the
12 circuit court of the county of this state where such land or any part thereof lies by petition setting
13 forth the general directions in which it is desired to construct its road, railroad, street railway,
14 telephone, or telegraph line or electric line, including, when that is the case, the construction and
15 maintenance of necessary dams and appurtenant canals, tunnels, flumes and tailraces and, when
16 that is the case, the appropriation of land submerged by the construction of such dam, and
17 including the erection and maintenance, when that is the case, of necessary electric steam
18 powerhouses, hydroelectric powerhouses and electric substations, or oil, pipeline, liquid fertilizer
19 solution pipeline, or gas line over or underneath the surface of such lands, a description of the
20 real estate, or other property, which the company seeks to acquire; the names of the owners
21 thereof, if known; or if unknown, a pertinent description of the property whose owners are
22 unknown and praying the [appointment] **selection** of three disinterested residents of the county,
23 as commissioners **as prescribed in section 523.040**, or a jury, to assess the damages which such
24 owners may severally sustain in consequence of the establishment, erection and maintenance of
25 such 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, tunnels
28 and tailraces and the erection and maintenance of necessary electric steam powerhouses,
29 hydroelectric powerhouses and electric substations, or oil, pipeline, or gas line over or
30 underneath the surface of such lands; to which petition the owners of any or all as the plaintiff
31 may elect of such parcels as lie within the county or circuit may be made parties defendant by
32 names if the names are known, and by the description of the unknown owners of the land therein
33 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 has

36 less estate than a fee, the person having the next vested estate in remainder may at the option of
37 the petitioners be made party defendant; but if such remaindermen are not made parties, their
38 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 title
41 or having a title of the premises appearing of record upon the proper records of the county.

42 4. Except as provided in subsection 5 of this section, nothing in this chapter shall be
43 construed to give a public utility, as defined in section 386.020, RSMo, or a rural electric
44 cooperative, as provided in chapter 394, RSMo, the power to condemn property which is
45 currently used by another provider of public utility service, including a municipality or a special
46 purpose district, when such property is used or useful in providing utility services, if the public
47 utility or cooperative seeking to condemn such property, directly or indirectly, will use or
48 proposes to use the property for the same purpose, or a purpose substantially similar to the
49 purpose that the property is being used by the provider of the public utility service.

50 5. A public utility or a rural electric cooperative may only condemn the property of
51 another provider of public utility service, even if the property is used or useful in providing
52 utility services by such provider, if the condemnation is necessary for the public purpose of
53 acquiring a nonexclusive easement or right-of-way across the property of such provider and only
54 if the acquisition will not materially impair or interfere with the current use of such property by
55 the utility or cooperative and will not prevent or materially impair such provider of public utility
56 service from any future expansion of its facilities on such property.

57 6. If a public utility or rural electric cooperative seeks to condemn the property of
58 another provider of public utility service, and the conditions in subsection 4 of this section do
59 not apply, this section does not limit the condemnation powers otherwise possessed by such
60 public utility or rural electric cooperative.

61 **7. For any taking of property, the state, any political subdivision of this state, or**
62 **any other entity with the power to take property shall declare and disclose to the public,**
63 **by publication of notice at least three times in a newspaper of general circulation in the**
64 **county in which the property is located, and the affected landowners the exact location of**
65 **such property and its specific intended use, which shall not include private development**
66 **purposes, except as otherwise provided in chapter 99, 100, or 353, RSMo, and such**
67 **property shall not be utilized for any other use or leased to anyone other than the owner**
68 **of record or otherwise transferred to another entity. Any entity which is a public utility**
69 **as defined pursuant to section 386.020, RSMo, a public utility authorized pursuant to**
70 **section 71.520, RSMo, a cooperative authorized pursuant to section 394.030, RSMo, or any**
71 **state department or agency, however, may only transfer property within the approved**

72 service area of a section 71.520, RSMo, public utility or section 394.030, RSMo, cooperative
73 without meeting the requirements of this subsection. Any entity taking property pursuant
74 to this subsection shall restore and maintain the property in a manner permitting the
75 property owner to cut or mow grass and weeds. If the entity taking the property fails,
76 within ten years of such taking, to use or no longer desires to use such property for its
77 specific intended use, the owner of record of such property shall have the right of first
78 refusal to any proposed transfer of the property and may repurchase the property for an
79 amount determined by using the same or substantially similar valuation and appraisal
80 process. Documentation of the valuation and appraisal process shall be maintained and
81 made available for inspection upon request of the parties, and an entity shall negotiate any
82 repurchase of such property in good faith; provided, however, that the exercise of such
83 repurchase rights shall not be allowed if the repurchase of the property would materially
84 adversely affect the ingress and egress rights of another property owner. If the owner of
85 record does not contract to repurchase the property within ninety days, the entity taking
86 the property may transfer it without restriction. This subsection shall not apply to any city
87 not within a county, any county with a charter form of government and with more than
88 one million inhabitants, any home rule city with more than four hundred thousand
89 inhabitants and located in more than one county, and any county which contains any part
90 of a home rule city with more than four hundred thousand inhabitants and located in more
91 than one county.

523.040. The court, or judge thereof in vacation, on being satisfied that due notice of the
2 pendency of the petition has been given, shall [appoint] **authorize the selection of three**
3 **disinterested commissioners[, who]. One commissioner shall be selected by the party seeking**
4 **condemnation, one commissioner shall be selected by the property owner or owners of the**
5 **property to be condemned, and a third commissioner shall be an independent appraiser**
6 **jointly selected and agreed upon by the party seeking condemnation and the property**
7 **owner of the property to be condemned. If the property owners of the property to be**
8 **condemned fail to agree on the selection of the second commissioner within thirty days of**
9 **court authorization, the court shall appoint an independent appraiser as the second**
10 **commissioner. If the party seeking condemnation and the property owner or owners fail**
11 **to agree on the selection of the third commissioner, the court shall appoint an independent**
12 **appraiser as the third commissioner. Costs shall be paid as provided in section 523.070.**
13 **Such commissioners** shall be residents of the county in which the real estate or a part thereof
14 is situated, to assess the damages which the owners may severally sustain by reason of such
15 appropriation, who, after having viewed the property, shall return to the clerk of such court,
16 under oath, their report in duplicate, of such assessment of damages, setting forth the amount of

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

523.070. The cost of the proceeding to appropriate the right-of-way shall be paid by the
2 company seeking the appropriation, [up to and] including the filing and copying of the report of
3 the commissioners' and [the court, as to] any **reasonable and necessary** costs made by
4 subsequent litigation[, may make such order as in its discretion may be deemed just]. The court
5 shall allow the commissioners a reasonable compensation for their services, which shall be taxed
6 as costs in the proceedings.

Section B. Because immediate action is necessary to ensure just compensation for the
2 restriction on loss of property rights for owners of real estate, the repeal and reenactment of
3 section A of this act is deemed necessary for the immediate preservation of the public health,
4 welfare, peace, and safety, and is hereby declared to be an emergency act within the meaning of
5 the constitution, and the repeal and reenactment of section A of this act shall be in full force and
6 effect upon its passage and approval.