

HOUSE SUBSTITUTE
FOR
HOUSE COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1085

1 AN ACT

2 To repeal sections 227.120, 523.010, 523.040,
3 and 523.070, RSMo, and to enact in lieu
4 thereof four new sections relating to the
5 eminent domain fairness act, with an
6 emergency clause for a certain section.

7

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
8 AS FOLLOWS:

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10 RSMo, are repealed and four new sections enacted in lieu thereof,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

13 227.120. 1. The state highways and transportation
14 commission shall have power to purchase, lease, or condemn, lands
15 in the name of the state of Missouri for the following purposes
16 when necessary for the proper and economical construction and
17 maintenance of state highways:

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

21 (2) Acquiring bridges or sites therefor and ferries,

1 including the rights and franchises for the maintenance and
2 operation thereof, over navigable streams, at such places as the
3 state highways and transportation commission shall have authority
4 to construct, acquire or contribute to the cost of construction
5 of any bridge;

6 (3) Acquiring the right-of-way for the location,
7 construction, reconstruction, widening, improvement or
8 maintenance of any highway ordered built by the bureau of public
9 roads of the Department of Agriculture of the United States
10 government;

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

17 (5) Changing gradients in any state highway;

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

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

24 (8) Eliminating grade crossings;

25 (9) Acquiring water supply and water power sites and

1 necessary lands for use in connection therewith, including
2 rights-of-way to any such sites;

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

5 (11) Acquiring lands for sight distances along any state
6 highway or any portion thereof whenever necessary, and also
7 acquiring lands within wyes formed by junctions of state
8 highways, or junctions of state highways and other public
9 highways;

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

14 (13) Acquiring lands for any other purpose necessary for
15 the proper and economical construction of the state highway
16 system for which the commission may have authority granted by
17 law. If condemnation becomes necessary, the commission shall
18 have the power to proceed to condemn such lands in the name of
19 the state of Missouri, in accordance with the provisions of
20 chapter 523, RSMo, insofar as the same is applicable to the said
21 state highways and transportation commission, and the court or
22 jury shall take into consideration the benefits to be derived by
23 the owner, as well as the damage sustained thereby. The state
24 highways and transportation commission also shall have the same
25 authority to enter upon private lands to survey and determine the

1 most advantageous route of any state highway as granted, under
2 section 388.210, RSMo, to railroad corporations.

3 2. In any case in which the commission exercises eminent
4 domain involving a taking of real estate, the court,
5 commissioners, and jury shall consider the restriction of or loss
6 of access to any adjacent highway as an element in assessing the
7 damages. As used in this subsection, "restriction of or loss of
8 access" includes, but is not limited to, the prohibition of
9 making right or left turns into or out of the real estate
10 involved, provided that such access was present before the
11 proposed improvement or taking.

12 523.010. 1. In case land, or other property, is sought to
13 be appropriated by any road, railroad, street railway, telephone,
14 telegraph or any electrical corporation organized for the
15 manufacture or transmission of electric current for light, heat
16 or power, including the construction, when that is the case, of
17 necessary dams and appurtenant canals, flumes, tunnels and
18 tailraces and including the erection, when that is the case, of
19 necessary electric steam powerhouses, hydroelectric powerhouses
20 and electric substations or any oil, pipeline or gas corporation
21 engaged in the business of transporting or carrying oil, liquid
22 fertilizer solutions, or gas by means of pipes or pipelines laid
23 underneath the surface of the ground, or other corporation
24 created under the laws of this state for public use, and such
25 corporation and the owners cannot agree upon the proper

1 compensation to be paid, or in the case the owner is incapable of
2 contracting, be unknown, or be a nonresident of the state, such
3 corporation may apply to the circuit court of the county of this
4 state where such land or any part thereof lies by petition
5 setting forth the general directions in which it is desired to
6 construct its road, railroad, street railway, telephone, or
7 telegraph line or electric line, including, when that is the
8 case, the construction and maintenance of necessary dams and
9 appurtenant canals, tunnels, flumes and tailraces and, when that
10 is the case, the appropriation of land submerged by the
11 construction of such dam, and including the erection and
12 maintenance, when that is the case, of necessary electric steam
13 powerhouses, hydroelectric powerhouses and electric substations,
14 or oil, pipeline, liquid fertilizer solution pipeline, or gas
15 line over or underneath the surface of such lands, a description
16 of the real estate, or other property, which the company seeks to
17 acquire; the names of the owners thereof, if known; or if
18 unknown, a pertinent description of the property whose owners are
19 unknown and praying the [appointment] selection of three
20 disinterested residents of the county, as commissioners as
21 prescribed in section 523.040, or a jury, to assess the damages
22 which such owners may severally sustain in consequence of the
23 establishment, erection and maintenance of such road, railroad,
24 street railway, telephone, telegraph line, or electrical line
25 including damages from the construction and maintenance of

1 necessary dams and the condemnation of land submerged thereby,
2 and the construction and maintenance of appurtenant canals,
3 flumes, tunnels and tailraces and the erection and maintenance of
4 necessary electric steam powerhouses, hydroelectric powerhouses
5 and electric substations, or oil, pipeline, or gas line over or
6 underneath the surface of such lands; to which petition the
7 owners of any or all as the plaintiff may elect of such parcels
8 as lie within the county or circuit may be made parties defendant
9 by names if the names are known, and by the description of the
10 unknown owners of the land therein described if their names are
11 unknown.

12 2. If the proceedings seek to affect the lands of persons
13 under conservatorship, the conservators must be made parties
14 defendant. If the present owner of any land to be affected has
15 less estate than a fee, the person having the next vested estate
16 in remainder may at the option of the petitioners be made party
17 defendant; but if such remaindermen are not made parties, their
18 interest shall not be bound by the proceedings.

19 3. It shall not be necessary to make any persons party
20 defendants in respect to their ownership unless they are either
21 in actual possession of the premises to be affected claiming
22 title or having a title of the premises appearing of record upon
23 the proper records of the county.

24 4. Except as provided in subsection 5 of this section,
25 nothing in this chapter shall be construed to give a public

1 utility, as defined in section 386.020, RSMo, or a rural electric
2 cooperative, as provided in chapter 394, RSMo, the power to
3 condemn property which is currently used by another provider of
4 public utility service, including a municipality or a special
5 purpose district, when such property is used or useful in
6 providing utility services, if the public utility or cooperative
7 seeking to condemn such property, directly or indirectly, will
8 use or proposes to use the property for the same purpose, or a
9 purpose substantially similar to the purpose that the property is
10 being used by the provider of the public utility service.

11 5. A public utility or a rural electric cooperative may
12 only condemn the property of another provider of public utility
13 service, even if the property is used or useful in providing
14 utility services by such provider, if the condemnation is
15 necessary for the public purpose of acquiring a nonexclusive
16 easement or right-of-way across the property of such provider and
17 only if the acquisition will not materially impair or interfere
18 with the current use of such property by the utility or
19 cooperative and will not prevent or materially impair such
20 provider of public utility service from any future expansion of
21 its facilities on such property.

22 6. If a public utility or rural electric cooperative seeks
23 to condemn the property of another provider of public utility
24 service, and the conditions in subsection 4 of this section do
25 not apply, this section does not limit the condemnation powers

1 otherwise possessed by such public utility or rural electric
2 cooperative.

3 7. For any taking of property, the state, any political
4 subdivision of this state, or any other entity with the power to
5 take property shall declare and disclose to the public, by
6 publication of notice at least three times in a newspaper of
7 general circulation in the county in which the property is
8 located, and the affected landowners the exact location of such
9 property and its specific intended use, and such property shall
10 not be utilized for any other use or leased to anyone other than
11 the owner of record or otherwise transferred to another entity.
12 Any entity which is a public utility as defined pursuant to
13 chapter 91, RSMo, a public utility authorized pursuant to section
14 71.520, RSMo, a cooperative authorized pursuant to section
15 394.030, RSMo, or any state department or agency, however, may
16 only transfer property within the approved service area of a
17 chapter 91, RSMo, public utility or section 394.030, RSMo,
18 cooperative and pursuant to any territorial agreement authorized
19 pursuant to section 394.312, RSMo, without meeting the
20 requirements of this subsection. Any entity taking property
21 pursuant to this subsection shall restore and maintain the
22 property in a manner permitting the property owner to cut or mow
23 grass and weeds where terrain conditions permit. If the entity
24 taking the property fails, within ten years of such taking, to
25 use or no longer desires to use such property for its specific

1 intended use, the owner of record of such property shall have the
2 right of first refusal to any proposed transfer of the property
3 and may repurchase the property for an amount determined by using
4 the same or substantially similar valuation and appraisal
5 process. Documentation of the valuation and appraisal process
6 shall be maintained and made available for inspection upon
7 request of the parties, and an entity shall negotiate any
8 repurchase of such property in good faith; provided, however,
9 that the exercise of such repurchase rights shall not be allowed
10 if the repurchase of the property would materially adversely
11 affect the ingress and egress rights of another property owner.
12 If the owner of record does not contract to repurchase the
13 property within ninety days, the entity taking the property may
14 transfer it without restriction. This subsection shall not apply
15 to any city not within a county, any county with a charter form
16 of government and with more than one million inhabitants, any
17 county with a charter form of government and with more than two
18 hundred fifty thousand but less than three hundred fifty thousand
19 inhabitants, any home rule city with more than four hundred
20 thousand inhabitants and located in more than one county, and any
21 county which contains any part of a home rule city with more than
22 four hundred thousand inhabitants and located in more than one
23 county.

24 523.040. The court, or judge thereof in vacation, on being
25 satisfied that due notice of the pendency of the petition has

1 been given, shall [appoint] authorize the selection of three
2 disinterested commissioners[, who]. One commissioner shall be
3 selected by the party seeking condemnation, one commissioner
4 shall be selected by the property owner or owners of the property
5 to be condemned, and a third commissioner shall be an independent
6 appraiser jointly selected and agreed upon by the party seeking
7 condemnation and the property owner of the property to be
8 condemned. If the property owners of the property to be
9 condemned fail to agree on the selection of the second
10 commissioner within thirty days of court authorization, the court
11 shall appoint an independent appraiser as the second
12 commissioner. If the party seeking condemnation and the property
13 owner or owners fail to agree on the selection of the third
14 commissioner, the court shall appoint an independent appraiser as
15 the third commissioner. Costs shall be paid as provided in
16 section 523.070. Such commissioners shall be residents of the
17 county in which the real estate or a part thereof is situated, to
18 assess the damages which the owners may severally sustain by
19 reason of such appropriation, who, after having viewed the
20 property, shall return to the clerk of such court, under oath,
21 their report in duplicate, of such assessment of damages, setting
22 forth the amount of damages allowed to the person or persons
23 named as owning or claiming the tract of land condemned, and
24 should more than one tract be condemned in the petition, then the
25 damages allowed to the owner, owners, claimant or claimants of

1 each tract, respectively, shall be stated separately, together
2 with a specific description of the tracts for which such damages
3 are assessed; and the clerk shall file one copy of said report in
4 [his] the clerk's office and record the same in the order book of
5 the court, and [he] the clerk shall deliver the other copy, duly
6 certified by [him] clerk, to the recorder of deeds of the county
7 where the land lies (or to the recorder of deeds of the city of
8 St. Louis, if the land lies in said city) who shall record the
9 same in his or her office, and index each tract separately as
10 provided in section 59.440, RSMo, and the fee for so recording
11 shall be taxed by the clerk as costs in the proceedings; and
12 thereupon such company shall pay to the clerk the amount thus
13 assessed for the party in whose favor such damages have been
14 assessed; and on making such payment it shall be lawful for such
15 company to hold the interest in the property so appropriated for
16 the uses prescribed in this section; and upon failure to pay the
17 assessment, the court may, upon motion and notice by the party
18 entitled to such damages, enforce the payment of the same by
19 execution, unless the said company shall, within ten days from
20 the return of such assessment, elect to abandon the proposed
21 appropriation of any parcel of land, by an instrument in writing
22 to that effect, to be filed with the clerk of the court, and
23 entered on the minutes of the court, and as to so much as is thus
24 abandoned, the assessment of damages shall be void.

25 523.070. The cost of the proceeding to appropriate the

1 right-of-way shall be paid by the company seeking the
2 appropriation, [up to and] including the filing and copying of
3 the report of the commissioners' and [the court, as to] any
4 reasonable and necessary costs made by subsequent litigation[,
5 may make such order as in its discretion may be deemed just].

6 The court shall allow the commissioners a reasonable compensation
7 for their services, which shall be taxed as costs in the
8 proceedings.

9 Section B. Because immediate action is necessary to ensure
10 just compensation for the restriction on loss of property rights
11 for owners of real estate, the repeal and reenactment of section
12 227.120 of section A of this act is deemed necessary for the
13 immediate preservation of the public health, welfare, peace, and
14 safety, and is hereby declared to be an emergency act within the
15 meaning of the constitution, and the repeal and reenactment of
16 section 227.120 of section A of this act shall be in full force
17 and effect upon its passage and approval.