

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10 RSMo, are repealed and four new sections enacted in lieu thereof,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;

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

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

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

18 (5) Changing gradients in any state highway;

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

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

25 (8) Eliminating grade crossings;

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

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

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

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

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

1 authority to enter upon private lands to survey and determine the
2 most advantageous route of any state highway as granted, under
3 section 388.210, RSMo, to railroad corporations.

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

13 523.010. 1. In case land, or other property, is sought to
14 be appropriated by any road, railroad, street railway, telephone,
15 telegraph or any electrical corporation organized for the
16 manufacture or transmission of electric current for light, heat
17 or power, including the construction, when that is the case, of
18 necessary dams and appurtenant canals, flumes, tunnels and
19 tailraces and including the erection, when that is the case, of
20 necessary electric steam powerhouses, hydroelectric powerhouses
21 and electric substations or any oil, pipeline or gas corporation
22 engaged in the business of transporting or carrying oil, liquid
23 fertilizer solutions, or gas by means of pipes or pipelines laid
24 underneath the surface of the ground, or other corporation
25 created under the laws of this state for public use, and such

1 corporation and the owners cannot agree upon the proper
2 compensation to be paid, or in the case the owner is incapable of
3 contracting, be unknown, or be a nonresident of the state, such
4 corporation may apply to the circuit court of the county of this
5 state where such land or any part thereof lies by petition
6 setting forth the general directions in which it is desired to
7 construct its road, railroad, street railway, telephone, or
8 telegraph line or electric line, including, when that is the
9 case, the construction and maintenance of necessary dams and
10 appurtenant canals, tunnels, flumes and tailraces and, when that
11 is the case, the appropriation of land submerged by the
12 construction of such dam, and including the erection and
13 maintenance, when that is the case, of necessary electric steam
14 powerhouses, hydroelectric powerhouses and electric substations,
15 or oil, pipeline, liquid fertilizer solution pipeline, or gas
16 line over or underneath the surface of such lands, a description
17 of the real estate, or other property, which the company seeks to
18 acquire; the names of the owners thereof, if known; or if
19 unknown, a pertinent description of the property whose owners are
20 unknown and praying the [appointment] selection of three
21 disinterested residents of the county, as commissioners as
22 prescribed in section 523.040, or a jury, to assess the damages
23 which such owners may severally sustain in consequence of the
24 establishment, erection and maintenance of such road, railroad,
25 street railway, telephone, telegraph line, or electrical line

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

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

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

25 4. Except as provided in subsection 5 of this section,

1 nothing in this chapter shall be construed to give a public
2 utility, as defined in section 386.020, RSMo, or a rural electric
3 cooperative, as provided in chapter 394, RSMo, the power to
4 condemn property which is currently used by another provider of
5 public utility service, including a municipality or a special
6 purpose district, when such property is used or useful in
7 providing utility services, if the public utility or cooperative
8 seeking to condemn such property, directly or indirectly, will
9 use or proposes to use the property for the same purpose, or a
10 purpose substantially similar to the purpose that the property is
11 being used by the provider of the public utility service.

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

23 6. If a public utility or rural electric cooperative seeks
24 to condemn the property of another provider of public utility
25 service, and the conditions in subsection 4 of this section do

1 not apply, this section does not limit the condemnation powers
2 otherwise possessed by such public utility or rural electric
3 cooperative.

4 7. For any taking of an interest in real estate, the state,
5 any political subdivision of this state, or any other entity with
6 the power to take interests in real estate, shall declare and
7 disclose to the public, by publication of notice in a newspaper
8 of general circulation in the county in which the property is
9 located, and by written notice to the record owners and adjacent
10 property owners of the real estate from whom an interest is to be
11 acquired, the exact description of real estate to be taken in fee
12 or of the easement to be taken, and the public uses of the
13 interest in the real estate to be taken. The interests in the
14 real estate taken shall not be utilized by the entity taking the
15 same or by any subsequent lessee or transferee, except where the
16 interest taken is an easement, by the owner of record so long as
17 the owner's use does not materially interfere with the rights
18 taken, for any uses which were not within the scope of the rights
19 acquired in the taking, nor in a manner that results in
20 uncompensated damages, with recourse as provided in subsection 8
21 of this section. Any entity taking an easement over tillable
22 farmland and pasture being used for agricultural purposes at the
23 time of the taking pursuant to this subsection shall restore that
24 part of the real estate that is not encumbered by the taking
25 entity's improvements to a condition that is similar to the

1 condition that existed prior to the construction of the
2 improvements so as to permit the owner of the real estate whose
3 real estate is encumbered by the easement to till, cut or mow
4 grass and weeds in those areas of the easement where there are no
5 improvements and where such tilling, cutting or mowing will not
6 harm the improvements and if terrain conditions otherwise permit.
7 With respect to easements taken by condemnation, if an entity
8 taking the easement fails, within ten years of such taking, to
9 use or no longer desires to use the easement for uses within the
10 scope of the rights acquired in the taking, the then record
11 owners of the real estate that is encumbered by the easement
12 shall have the right to acquire the taking entity's easement
13 rights for a price equal to the compensation paid by the taking
14 entity when the easement was acquired; provided, however, and not
15 withstanding any other provision of law to the contrary,
16 easements acquired through eminent domain shall not be used for
17 any rails-to-trails system upon abandonment by the entity
18 acquiring such easement. With respect to real estate taken by
19 condemnation in fee that at the time of the taking was a part of
20 a larger parcel of real estate, if the taking entity fails,
21 within ten years of such taking, to use or no longer desires to
22 use the real estate for uses within the scope of the rights
23 acquired in the taking, the then record owners of the larger
24 parcel from which the property taken by condemnation was acquired
25 shall have the right to repurchase the real estate that was taken

1 for its then fair market value; provided, however, that the
2 exercise of such repurchase rights shall not be allowed if the
3 repurchase of the real estate that was taken would materially
4 adversely affect the ingress and egress rights of another nearby
5 owner of another parcel of real estate. The taking entity shall
6 negotiate any repurchase of the easement rights or fee interest
7 in real estate that were taken in good faith, with recourse as
8 provided in subsection 8 of this section. If the owner of record
9 with repurchase rights as provided for in this subsection above
10 does not contract to repurchase the easement rights or fee
11 property that was taken within ninety days after notice of the
12 proposed transfer was given, the entity taking the property may
13 transfer it, subject to use limitations provided in this
14 subsection. This subsection shall not apply to takings occurring
15 in 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 8. Any issue as to whether a use of the property is within
25 the scope of rights acquired in the taking, the extent of any

1 uncompensated damages, or whether a negotiation by the taking
2 entity of any repurchase of easement rights or fee interest in
3 real estate pursuant to the repurchase provisions of subsection 7
4 of this section was in good faith may be determined in an action
5 brought in the circuit court of the county in which the property
6 is located and in the form of a declaratory judgment as provided
7 in chapter 527, RSMo. The court shall use a reasonable person
8 standard in making such determination. Court costs may be
9 awarded at the discretion of the court.

10 9. This section shall not apply to easements acquired by a
11 railroad through the use of eminent domain where such easements
12 are to be used solely for the purpose of the operation of the
13 railroad or its related facilities.

14 523.040. The court, or judge thereof in vacation, [on being
15 satisfied that] at the time due notice of the pendency of the
16 petition [has been] is given, shall [appoint] authorize the
17 selection of three disinterested commissioners[, who]. One
18 commissioner shall be selected by the party seeking condemnation,
19 one commissioner shall be selected by the property owner or
20 owners of the property to be condemned, and a third commissioner
21 shall be an independent appraiser jointly selected and agreed
22 upon by the party seeking condemnation and the property owner of
23 the property to be condemned. If the property owners of the
24 property to be condemned fail to agree on the selection of the
25 second commissioner at or prior to the initial hearing on the

1 condemnation proceeding, the court shall appoint an independent
2 appraiser as the second commissioner. If the party seeking
3 condemnation and the property owner or owners fail to agree on
4 the selection of the third commissioner at or prior to the
5 initial hearing on the condemnation proceeding, the court shall
6 appoint an independent appraiser as the third commissioner.
7 Costs shall be paid as provided in section 523.070. Such
8 commissioners shall be residents of the county in which the real
9 estate or a part thereof is situated, to assess the damages which
10 the owners may severally sustain by reason of such appropriation,
11 who, after having viewed the property, shall return to the clerk
12 of such court, under oath, their report in duplicate, of such
13 assessment of damages, setting forth the amount of damages
14 allowed to the person or persons named as owning or claiming the
15 tract of land condemned, and should more than one tract be
16 condemned in the petition, then the damages allowed to the owner,
17 owners, claimant or claimants of each tract, respectively, shall
18 be stated separately, together with a specific description of the
19 tracts for which such damages are assessed; and the clerk shall
20 file one copy of said report in [his] the clerk's office and
21 record the same in the order book of the court, and [he] the
22 clerk shall deliver the other copy, duly certified by [him]
23 clerk, to the recorder of deeds of the county where the land lies
24 (or to the recorder of deeds of the city of St. Louis, if the
25 land lies in said city) who shall record the same in his or her

1 office, and index each tract separately as provided in section
2 59.440, RSMo, and the fee for so recording shall be taxed by the
3 clerk as costs in the proceedings; and thereupon such company
4 shall pay to the clerk the amount thus assessed for the party in
5 whose favor such damages have been assessed; and on making such
6 payment it shall be lawful for such company to hold the interest
7 in the property so appropriated for the uses prescribed in this
8 section; and upon failure to pay the assessment, the court may,
9 upon motion and notice by the party entitled to such damages,
10 enforce the payment of the same by execution, unless the said
11 company shall, within ten days from the return of such
12 assessment, elect to abandon the proposed appropriation of any
13 parcel of land, by an instrument in writing to that effect, to be
14 filed with the clerk of the court, and entered on the minutes of
15 the court, and as to so much as is thus abandoned, the assessment
16 of damages shall be void.

17 523.070. The cost of the proceeding to appropriate the
18 right-of-way shall be paid by the company seeking the
19 appropriation, [up to and] including the filing and copying of
20 the report of the commissioners' and [the court, as to] any
21 reasonable and necessary costs made by subsequent litigation[,
22 may make such order as in its discretion may be deemed just].
23 The court shall allow the commissioners a reasonable compensation
24 for their services, which shall be taxed as costs in the
25 proceedings.

1 Section B. Because immediate action is necessary to ensure
2 just compensation for the restriction on loss of property rights
3 for owners of real estate, the repeal and reenactment of section
4 227.120 of section A of this act is deemed necessary for the
5 immediate preservation of the public health, welfare, peace, and
6 safety, and is hereby declared to be an emergency act within the
7 meaning of the constitution, and the repeal and reenactment of
8 section 227.120 of section A of this act shall be in full force
9 and effect upon its passage and approval.