

FIRST REGULAR SESSION

# HOUSE BILL NO. 1277

## 98TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE MCGAUGH.

2608L.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal sections 523.039, 523.060, and 523.265, RSMo, and to enact in lieu thereof four new sections relating to condemnation proceedings.

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

Section A. Sections 523.039, 523.060, and 523.265, RSMo, are repealed and four new  
2 sections enacted in lieu thereof, to be known as sections 523.039, 523.051, 523.060, and  
3 523.265, to read as follows:

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, **or under subsection 2 of this section,**  
4 as applicable to the 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 condemnations of property that result in any taking that prevents the owner from  
9 utilizing property in substantially the same manner as it was currently being utilized on the day  
10 of the taking and involving property owned within the same family for fifty or more years, an  
11 amount equivalent to the sum of the fair market value and heritage value. For the purposes of  
12 this subdivision, family ownership of property may be established through evidence of ownership  
13 by children, grandchildren, siblings, or nephews or nieces of the family member owning the  
14 property fifty years prior to the taking; and in addition, may be established through marriage or  
15 adoption by such family members. If any entity owns the real property, members of the family  
16 shall have an ownership interest in more than fifty percent of the entity in order to be within the

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.

17 family line of ownership for the purposes of this subdivision. The property owner shall have the  
18 burden of proving to the commissioners or jury that the property has been owned within the same  
19 family for fifty or more years.

20 **2. When private real property that is an agricultural or nonagricultural homestead,**  
21 **rental residential property, and both commercial and noncommercial seasonal residential**  
22 **recreational property is proposed to be acquired for the construction of a site or route for**  
23 **a high-voltage transmission line with a capacity of two hundred kilovolts or more by**  
24 **eminent domain proceedings, the owner shall have the option to require the utility to**  
25 **condemn a fee interest in any amount of contiguous, commercially viable land which the**  
26 **owner wholly owns in undivided fee. Commercial viability shall be determined without**  
27 **regard to the presence of the utility route or site. Within one hundred twenty days of the**  
28 **service of an objection by the utility, the circuit court having jurisdiction over the eminent**  
29 **domain proceeding shall hold a hearing to determine whether the utility's objection is**  
30 **upheld or rejected. The utility has the burden of proof to prove by a preponderance of the**  
31 **evidence that the property elected by the owner is not commercially viable. The owner**  
32 **shall have only one such option and shall not expand or otherwise modify an election**  
33 **without the consent of the utility. The required acquisition of land under this subsection**  
34 **shall be considered an acquisition for a public purpose and for use in the utility's business;**  
35 **provided that a utility shall divest itself completely of all such lands used for farming or**  
36 **capable of being used for farming no later than the time it can receive the market value**  
37 **paid at the time of acquisition of lands less any diminution in value by reason of the**  
38 **presence of the utility route or site. Upon the owner's election made under this subsection,**  
39 **the easement interest over and adjacent to the lands designated by the owner to be**  
40 **acquired in fee sought in the condemnation petition for a right-of-way for a high-voltage**  
41 **transmission line a capacity of two hundred kilovolts or more shall automatically be**  
42 **converted into a fee taking.**

2 **523.051. If the commissioners find, after applying the definition of fair market**  
3 **value provided for in subdivision (1) of section 523.001, that the fair market value of the**  
4 **property taken is greater than one hundred twenty percent of the fair market value offered**  
5 **by the condemnor in the condemnor's written offer as required in subsection 1 of section**  
6 **523.253, then the difference between the fair market value determined by the**  
7 **commissioners and the fair market value offered by the condemnor in the letter required**  
8 **in subsection 1 of section 523.253 shall be trebled and the condemnor shall be responsible**  
9 **to pay reasonable attorney fees and related valuation expert costs incurred by the property**  
owner.

523.060. 1. Any plaintiff or defendant, individual or corporate, shall have the right of trial by jury of twelve persons, if either party file exceptions to the award of commissioners in any condemnation case.

2. Such jury shall use the definition of fair market value provided for in subdivision (1) of section 523.001.

**3. If the jury finds, after applying the definition of fair market value provided for in subdivision (1) of section 523.001, that the fair market value of the property taken is greater than one hundred twenty percent of the fair market value offered by the condemnor in the condemnor's written offer as required in subsection 1 of section 523.253, then the difference between the fair market value determined by the jury and the fair market value offered by the condemnor in the letter required in subsection 1 of section 523.253 shall be trebled and the condemnor shall be responsible to pay reasonable attorney fees and related valuation expert costs incurred by the property owner.**

523.265. With regard to property interests acquired by condemnation or negotiations in lieu of the exercise thereof, within thirty days of receiving a written notice sent under section 523.250, the landowner may propose to the condemning authority in writing an alternative location for the property to be condemned, which alternative location shall be on the same parcel of the landowner's property as the property the condemning authority seeks to condemn. The proposal shall describe the alternative location in such detail that the alternative location is clearly defined for the condemning authority. The condemning authority shall consider all such alternative locations. This section shall not apply to takings of an entire parcel of land. [A written statement by the condemning authority to the landowner that it has considered all such alternative locations, and briefly stating why they were rejected or accepted, is conclusive evidence that sufficient consideration was given to the alternative locations.] **The condemning authority shall specifically inform the property owner in the same written communication that the fair market value offer is provided to the property owner as required in subsection 1 of section 523.253. A written statement is required that an alternative proposed location for the property to be condemned was considered and accepted. The condemning authority shall undertake all commercially feasible steps to implement a property owner's proposed alternate location unless it is:**

**(1) Impossible to engineer;**

**(2) Crosses environmentally protected lands or waterways; or**

**(3) Would increase the costs of the project by more than two times the fair market value offered by the condemnor in the condemnor's written offer as required in subsection 1 of section 523.253.**

24 **If the condemning authority does not agree with any of the proposed alternate locations,**  
25 **the property owner shall have a right to have an independent third party appointed by the**  
26 **judge granting the right of eminent domain to review the evidence supporting the**  
27 **condemning authority's conclusions that the proposed alternates could not be engineered,**  
28 **crossed environmentally protected lands or waterways, or would cost more than two times**  
29 **the fair market value the condemning authority offered under section 523.253. If the**  
30 **independent third party finds that the condemning authority did not act in good faith in**  
31 **its consideration of proposed alternate locations, the condemning authority shall lose its**  
32 **right to condemn any property of the property owner proposing such alternate locations.**  
33 **An independent third party shall be an engineering firm having experience in the type and**  
34 **scope of project the condemning authority is seeking condemnation rights. If there is a**  
35 **proposed alternate location, as agreed to by the condemning authority, and such alternate**  
36 **location represents a larger taking of property than originally sought by the condemning**  
37 **authority, then the fair market value of the alternate location shall not be determined to**  
38 **be greater than the fair market value of the original proposed location as such fair market**  
39 **value is determined by either the commissioners or a jury.**

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