

SECOND REGULAR SESSION

# HOUSE BILL NO. 1085

## 92ND GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES TOWNLEY (Sponsor), HOBBS, DETHROW, WHORTON, WILSON (119), BIVINS, HARRIS (110), MAY, MYERS, GOODMAN, MAYER, BEAN, MUNZLINGER, QUINN, SELBY, DEEKEN, DOUGHERTY, GUEST, BRUNS AND SMITH (118) (Co-sponsors).

Read 1<sup>st</sup> time January 14, 2004, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

3654L.011

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### AN ACT

To repeal sections 523.010, 523.040, and 523.070, RSMo, and to enact in lieu thereof three new sections relating to the taking of property.

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

Section A. Sections 523.010, 523.040, and 523.070, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 523.010, 523.040, and 523.070, to read as follows:

523.010. 1. In case land, or other property, is sought to be appropriated by any road, railroad, street railway, telephone, telegraph or any electrical corporation organized for the manufacture or transmission of electric current for light, heat or power, including the construction, when that is the case, of necessary dams and appurtenant canals, flumes, tunnels and tailraces and including the erection, when that is the case, of necessary electric steam powerhouses, hydroelectric powerhouses and electric substations or any oil, pipeline or gas corporation engaged in the business of transporting or carrying oil, liquid fertilizer solutions, or gas by means of pipes or pipelines laid underneath the surface of the ground, or other corporation created under the laws of this state for public use, and such corporation and the owners cannot agree upon the proper compensation to be paid, or in the case the owner is incapable of contracting, be unknown, or be a nonresident of the state, such corporation may apply to the circuit court of the county of this state where such land or any part thereof lies by petition setting forth the general directions in which it is desired to construct its road, railroad, street railway, telephone, or telegraph line or electric line, including, when that is the case, the construction and

**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.**

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 **and the affected landowners the exact location of such property and its specific intended**  
64 **use, which shall not include private development purposes, and such property shall not be**  
65 **utilized for any other use or leased or otherwise transferred to another entity. If the entity**  
66 **taking the property fails, within ten years of such taking, to use or no longer desires to use**  
67 **such property for its specific intended use, the original property owner shall have the right**  
68 **of first refusal to any proposed transfer of the property and may repurchase the property**  
69 **for an amount not greater than the amount the original property owner received for the**  
70 **taking of such property, using the same or substantially similar valuation and appraised**  
71 **process. If the original owner does not repurchase the property within one year, the entity**  
72 **taking the property may transfer it without restriction.**

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 party seeking condemnation and the**  
8 **property owner or owners fail to agree on the selection of the third commissioner, the court**  
9 **shall appoint an independent appraiser as the third commissioner. Costs shall be paid as**  
10 **provided in section 523.070. Such commissioners** shall be residents of the county in which  
11 the real estate or a part thereof is situated, to assess the damages which the owners may severally  
12 sustain by reason of such appropriation, who, after having viewed the property, shall return to  
13 the 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 which  
18 such damages are assessed; and the clerk shall file one copy of said report in [his] **the clerk's**  
19 office and record the same in the order book of the court, and [he] **the clerk** shall deliver the  
20 other copy, duly certified by [him] **clerk**, to the recorder of deeds of the county where the land  
21 lies (or to the recorder of deeds of the city of St. Louis, if the land lies in said city) who shall  
22 record the same in his **or her** office, and index each tract separately as provided in section  
23 59.440, RSMo, and the fee for so recording shall be taxed by the clerk as costs in the  
24 proceedings; and thereupon such company shall pay to the clerk the amount thus assessed for the  
25 party in whose favor such damages have been assessed; and on making such payment it shall be  
26 lawful for such company to hold the interest in the property so appropriated for the uses  
27 prescribed in this section; and upon failure to pay the assessment, the court may, upon motion  
28 and notice by the party entitled to such damages, enforce the payment of the same by execution,  
29 unless the said company shall, within ten days from the return of such assessment, elect to  
30 abandon the proposed appropriation of any parcel of land, by an instrument in writing to that  
31 effect, to be filed with the clerk of the court, and entered on the minutes of the court, and as to  
32 so much as is thus abandoned, the assessment of damages shall 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 costs made by subsequent litigation[, may make  
4 such order as in its discretion may be deemed just]. The court shall allow the commissioners a  
5 reasonable compensation for their services, which shall be taxed as costs in the proceedings.