

SECOND REGULAR SESSION

# HOUSE JOINT RESOLUTION NO. 53

## 93RD GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES LEMBKE (Sponsor), NIEVES, AVERY,  
EMERY AND BIVINS (Co-sponsors).

Read 1st time March 29, 2006 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

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### JOINT RESOLUTION

Submitting to the qualified voters of Missouri an amendment repealing sections 26 and 28 of article I of the Constitution of Missouri, and adopting two new sections in lieu thereof relating to eminent domain.

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*Be it resolved by the House of Representatives, the Senate concurring therein:*

That at the next general election to be held in the state of Missouri, on Tuesday next  
2 following the first Monday in November, 2006, or at a special election to be called by the  
3 governor for that purpose, there is hereby submitted to the qualified voters of this state, for  
4 adoption or rejection, the following amendment to article I of the Constitution of the state of  
5 Missouri:

Section A. Sections 26 and 28, article I, Constitution of Missouri, are repealed and two  
2 new sections adopted in lieu thereof, to be known as sections 26 and 28, to read as follows:

Section 26. [That private property shall not be taken or damaged for public use without  
2 just compensation.] **That the power of eminent domain shall be vested in no other than the**  
3 **state, or political subdivisions of the state whose officials are directly responsible to elected**  
4 **officials, and that private property, or the right to the use, sale, or enjoyment of private**  
5 **property, shall not be directly or indirectly taken or damaged unless such taking is**  
6 **necessary for a public use and just compensation is rendered.** Such compensation shall be  
7 ascertained by a jury or board of commissioners of not less than three freeholders, in such  
8 manner as may be provided by law[; and until the same]. **The value of the property may be**

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.

9 **determined by, but is not limited to, appraisal methods typical to the ordinary course of**  
10 **business and any evidence which would be considered by an appraiser in the ordinary**  
11 **course of business shall be relevant and admissible. Until compensation** shall be paid to the  
12 owner, or into court for the owner, **and unless a final legal determination of any legal**  
13 **challenges to the taking is rendered,** the property shall not be disturbed or the proprietary rights  
14 of the owner therein divested. The fee of land taken for railroad purposes without consent of the  
15 owner thereof shall remain in such owner subject to the use for which it is taken.

Section 28. 1. That private property [shall not be] taken for private use **or private**  
2 **ownership or other private rights shall not be considered a public use and no such takings**  
3 **shall occur** with or without compensation, unless by consent of the owner, except for private  
4 ways of necessity, and except for drains and ditches across the lands of others for agricultural and  
5 sanitary purposes, in the manner prescribed by law; and that when an attempt is made to take  
6 private property for a use alleged to be public, the question whether the contemplated use be  
7 public shall be judicially determined without regard to any legislative declaration that the use is  
8 public.

9 2. The use of property, or rights in property, shall be declared at the time that such  
10 **property, or rights in property, is taken by eminent domain. If that use is not earnestly or**  
11 **substantially pursued, the original owner, his heirs or assigns shall, after five years but**  
12 **prior to any substantial accomplishment of the declared purpose, be allowed to claim the**  
13 **property back at a price no greater than was paid at the time of taking.**

14 3. Subject to the conditions set forth in section 26 of this article, property may be  
15 taken for transportation or utility facilities or transmission systems used by a railroad,  
16 **regulated utility, or rural electric cooperative; however, the fee of property taken for such**  
17 **purposes without consent of the owner thereof shall remain in such owner, his heirs or**  
18 **assigns subject to the use for which it is taken.**

19 4. Except as provided for in subsection 1 and subsection 3 of this section and  
20 notwithstanding section 27 of this article, property, or a portion thereof, or rights in  
21 property taken by eminent domain cannot be sold, transferred, leased, or otherwise made  
22 available for use by a private entity within twenty years of such taking, unless the original  
23 owner, his heirs or assigns, have at the time of sale, been afforded the first opportunity to  
24 purchase such property back at a price no greater than was paid at the time of taking;  
25 however, interests less than fee title may be conveyed to a privately owned business for the  
26 purpose of providing products or services incidental to the function of a publicly owned  
27 facility.

28           **5. The effective date of this amendment shall be November 8, 2006, and the**  
29 **provisions of article I, sections 26 and 28 apply notwithstanding any application to the**  
30 **contrary of article VI, section 21 of this constitution.**

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