

SECOND REGULAR SESSION

HOUSE JOINT RESOLUTION NO. 52

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES HARRIS (Sponsor), MEADOWS, WALLACE, SCHIEFFER,
FISCHER (107), KUESSNER, LAMPE, ROORDA AND OXFORD (Co-sponsors).

3586L.011

D. ADAM CRUMBLISS, Chief Clerk

JOINT RESOLUTION

Submitting to the qualified voters of Missouri an amendment repealing sections 26, 27, and 28 of article I of the Constitution of Missouri, and adopting three new sections in lieu thereof relating to the power of eminent domain.

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 following the first Monday in November, 2010, or at a special election to be called by the governor for that purpose, there is hereby submitted to the qualified voters of this state, for adoption or rejection, the following amendment to article I of the Constitution of the state of Missouri:

Section A. Sections 26, 27, and 28, article I, Constitution of Missouri, are repealed and three new sections adopted in lieu thereof, to be known as sections 26, 27, and 28, to read as follows:

Section 26. That [private property shall not be taken or damaged for public use without just compensation] **the power of eminent domain shall be vested in no other than the state, including state entities expressly granted such power by this constitution, or in political subdivisions of the state whose officials are directly accountable to elected officers. That private property shall not be taken or damaged unless such taking is necessary for a public use and just compensation is rendered.** Such compensation shall be ascertained by a jury or board of commissioners of not less than three freeholders, in such manner as may be provided by law[; and until the same] . **The value of the property may be determined by, but is not limited to, appraisal methods typical to the ordinary course of business, and any evidence**

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.

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

Section 27. That in such manner and under such limitations as may be provided by law,
2 the state, or any county or city may acquire by eminent domain such property, or rights in
3 property, in excess of that actually to be occupied by the public improvement or used in
4 connection therewith, as may be reasonably necessary to effectuate the purposes intended, and
5 may be vested with the fee simple title thereto, or the control of the use thereof, and may sell
6 such excess property, **subject to the conditions set forth in subsection 4 of section 28 of this**
7 **article**, with such restrictions as shall be appropriate to preserve the improvements made.

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 with or without compensation, unless by consent of the owner, except for private ways of
4 necessity, and except for drains and ditches across the lands of others for agricultural and sanitary
5 purposes, in the manner prescribed by law; and that when an attempt is made to take private
6 property for a use alleged to be public, the question whether the contemplated use be public shall
7 be judicially determined without regard to any legislative declaration that the use is public.

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

19 4. **Except as provided in subsections 1 and 3 of this section, property, a portion**
20 **thereof, or rights in property taken by eminent domain may not be sold, transferred, leased**
21 **or otherwise made available for use by a private entity within twenty years of such taking,**
22 **unless the original owner, his or her heirs or assigns, have at the time of conveyance of such**
23 **rights, been afforded the first opportunity to purchase such property back at a price no**

24 greater than was paid at the time of taking; however, interests less than fee title may be
25 conveyed to a privately owned business for the purpose of providing products or services
26 incidental to the function of a publicly owned facility.

27 **5. Notwithstanding the provisions of section 2(b) of article XII of this constitution**
28 **to the contrary, the provisions of this amendment shall become effective upon its passage**
29 **and approval, and shall supercede any application to the contrary of section 21, article VI**
30 **of this constitution.**

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