

SECOND REGULAR SESSION

# HOUSE BILL NO. 2169

## 103RD GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE POLLITT.

5370H.011

JOSEPH ENGLER, Chief Clerk

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### AN ACT

To repeal section 523.010, RSMo, and to enact in lieu thereof one new section relating to eminent domain for utility purposes.

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

Section A. Section 523.010, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 523.010, to read as follows: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 maintenance of necessary dams and appurtenant canals, tunnels, flumes and tailraces and, when that is the case, the appropriation of land submerged by the construction of such dam, and including the erection and maintenance, when that is the case, of necessary

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.

18 electric steam powerhouses, hydroelectric powerhouses and electric substations, or oil,  
19 pipeline, liquid fertilizer solution pipeline, or gas line over or underneath the surface of such  
20 lands, a description of the real estate, or other property, which the company seeks to acquire;  
21 the names of the owners thereof, if known; or if unknown, a pertinent description of the  
22 property whose owners are unknown and praying the appointment of three disinterested  
23 residents of the county, as commissioners, or a jury, to assess the damages which such owners  
24 may severally sustain in consequence of the establishment, erection and maintenance of such  
25 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,  
28 tunnels and tailraces and the erection and maintenance of necessary electric steam  
29 powerhouses, hydroelectric powerhouses and electric substations, or oil, pipeline, or gas  
30 line over or underneath the surface of such lands; to which petition the owners of any or all as  
31 the plaintiff may elect of such parcels as lie within the county or circuit may be made parties  
32 defendant by names if the names are known, and by the description of the unknown owners of  
33 the land therein 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  
36 has less estate than a fee, the person having the next vested estate in remainder may at the  
37 option of the petitioners be made party defendant; but if such remaindermen are not made  
38 parties, their 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  
41 title or having a title of the premises appearing of record upon the proper records of the  
42 county.

43         4. Except as provided in subsection 5 of this section, nothing in this chapter shall be  
44 construed to give a public utility, as defined in section 386.020, or a rural electric cooperative,  
45 as provided in chapter 394, the power to condemn property which is currently used by another  
46 provider of public utility service, including a municipality or a special purpose district, when  
47 such property is used or useful in providing utility services, if the public utility or cooperative  
48 seeking to condemn such property, directly or indirectly, will use or proposes to use the  
49 property for the same purpose, or a purpose substantially similar to the purpose for which the  
50 property is being used by the provider of the public utility service.

51         5. A public utility or a rural electric cooperative may only condemn the property of  
52 another provider of public utility service, even if the property is used or useful in providing  
53 utility services by such provider, if the condemnation is necessary for the public purpose of  
54 acquiring a nonexclusive easement or right-of-way across the property of such provider and

55 only if the acquisition will not materially impair or interfere with the current use of such  
56 property by the utility or cooperative and will not prevent or materially impair such provider  
57 of public utility service from any future expansion of its facilities on such property.

58         6. If a public utility or rural electric cooperative seeks to condemn the property of  
59 another provider of public utility service, and the conditions in subsection 4 of this section do  
60 not apply, this section does not limit the condemnation powers otherwise possessed by such  
61 public utility or rural electric cooperative.

62         7. Suits in inverse condemnation or involving dangerous conditions of public  
63 property against a municipal corporation established under Article VI, Section 30(a) of the  
64 Missouri Constitution shall be brought only in the county where such land or any part thereof  
65 lies.

66         8. For purposes of this chapter, the authority for an electrical corporation as defined in  
67 section 386.020, except for an electrical corporation operating under a cooperative business  
68 plan as described in section 393.110, to condemn property for purposes of constructing an  
69 electric plant subject to a certificate of public convenience and necessity under subsection 1  
70 of section 393.170 shall not extend to the construction of a merchant transmission line with  
71 Federal Energy Regulatory Commission negotiated rate authority unless such line has a  
72 substation or converter station located in Missouri which is capable of delivering an amount  
73 of its electrical capacity to electrical customers in this state that is greater than or equal to the  
74 proportionate number of miles of the line that passes through the state. The provisions of this  
75 subsection shall not apply to applications filed pursuant to section 393.170 prior to August 28,  
76 2022.

77         **9. For the purposes of this chapter, the authority of any corporation set forth in**  
78 **subsection 1 of this section to condemn property shall not extend to:**

79         **(1) The construction or erection of any plant, tower, panel, or facility that**  
80 **utilizes, captures, or converts wind or air currents to generate or manufacture**  
81 **electricity; or**

82         **(2) The construction or erection of any plant, tower, panel, or facility that**  
83 **utilizes, captures, or converts the light or heat generated by the sun to generate or**  
84 **manufacture electricity.**

85         **10. Subject to subsection 8 of this section, but notwithstanding subsection 9 of**  
86 **this section, the authority of any corporation set forth in subsection 1 of this section to**  
87 **condemn property shall extend to acquisition of rights needed to construct, operate, and**  
88 **maintain collection lines, distribution lines, transmission lines, communications lines,**  
89 **substations, switchyards, and other facilities needed to collect and deliver energy**

90 **generated or manufactured by the facilities described in subsection 9 of this section to**  
91 **the distribution or transmission grid.**

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