

SECOND REGULAR SESSION

SENATE BILL NO. 959

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR ALTER.

Read 1st time January 26, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

4763S.01I

AN ACT

To repeal sections 523.040 and 523.205, RSMo, and to enact in lieu thereof nine new sections relating to eminent domain, with a contingent effective date.

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

Section A. Sections 523.040 and 523.205, RSMo, are repealed and nine
2 new sections enacted in lieu thereof, to be known as sections 523.012, 523.025,
3 523.035, 523.040, 523.094, 523.110, 523.120, 523.125, and 523.205, to read as
4 follows:

523.012. The state or any political subdivision thereof shall set
2 forth in writing a general description of the project it intends to
3 complete that requires the use of eminent domain before proceeding
4 with the condemnation of property. The description of the project shall
5 include its intended benefit to the public, an explanation of if or how the
6 public will use the condemned property, the estimated costs, the
7 anticipated sources of funds, the anticipated date of the retirement of
8 obligations incurred to finance the project, and the plan for providing
9 relocation assistance as required by section 523.205.

523.025. Notwithstanding any other provision of law to the
2 contrary, no political subdivision shall exercise the power of eminent
3 domain or condemnation until the governing body approves of the
4 proposed condemnation by a two-thirds majority vote.

523.035. 1. After the petition has been filed under section 523.030,
2 the court shall, prior to appointing commissioners under section 523.040,
3 determine whether or not:

4 (1) The condemning entity has the authority to exercise the power
5 of eminent domain;

6 (2) The property sought to be condemned is subject to the exercise

7 of eminent domain;

8 (3) The property sought to be condemned is for a public use; and

9 (4) The condemning entity is properly exercising the power of
10 eminent domain in the particular proceeding.

11 The court may also determine any other issues raised by the owner of
12 the property which attacks the validity of the condemning entity's right
13 to exercise eminent domain over the owner's property.

14 2. If the court determines that the condemning entity has satisfied
15 all the requirements of subsection 1 of this section, the court shall enter
16 an interlocutory order to such effect. An interlocutory appeal shall lie
17 from the decision as a matter of right.

18 3. If the court determines that the condemning entity has not
19 satisfied all the requirements of subsection 1 of this section and does not
20 have the authority to exercise the power of eminent domain in this
21 particular proceeding, the court shall dismiss the condemning entity's
22 petition with prejudice and direct the condemning entity to pay the
23 owner's court costs and attorneys' fees.

24 4. The appeal provided for in subsection 2 of this section shall be
25 an interlocutory appeal, filed in the appropriate district of the Missouri
26 court of appeals. Notice of such interlocutory appeal shall be filed
27 within three days of the entry of the order of trial court; the time limits
28 applicable to such appeal shall be the same as in interlocutory appeals
29 allowed to the state in criminal cases.

523.040. The court, or judge thereof in vacation, on being satisfied that
2 due notice of the pendency of the petition has been given, shall appoint three
3 disinterested commissioners, who shall be residents of the county in which the
4 real estate or a part thereof is situated[, to]. **The Missouri supreme court**
5 **shall promulgate rules to establish uniform instructions to be given to**
6 **commissioners regarding the scope and nature of their duties when**
7 **determining the amount of compensation an owner is to receive for his**
8 **or her condemned property. The commissioners** assess the damages which
9 the owners may severally sustain by reason of such appropriation, who, after
10 having viewed the property, shall return to the clerk of such court, under oath,
11 their report in duplicate, of such assessment of damages, setting forth the amount
12 of damages allowed to the person or persons named as owning or claiming the
13 tract of land condemned, and should more than one tract be condemned in the
14 petition, then the damages allowed to the owner, owners, claimant or claimants

15 of each tract, respectively, shall be stated separately, together with a specific
16 description of the tracts for which such damages are assessed; and the clerk shall
17 file one copy of said report in his office and record the same in the order book of
18 the court, and he shall deliver the other copy, duly certified by him, to the
19 recorder of deeds of the county where the land lies (or to the recorder of deeds of
20 the city of St. Louis, if the land lies in said city) who shall record the same in his
21 office, and index each tract separately as provided in section 59.440, RSMo, and
22 the fee for so recording shall be taxed by the clerk as costs in the proceedings;
23 and thereupon such company shall pay to the clerk the amount thus assessed for
24 the party in whose favor such damages have been assessed; and on making such
25 payment it shall be lawful for such company to hold the interest in the property
26 so appropriated for the uses prescribed in this section; and upon failure to pay the
27 assessment, the court may, upon motion and notice by the party entitled to such
28 damages, enforce the payment of the same by execution, unless the said company
29 shall, within ten days from the return of such assessment, elect to abandon the
30 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
32 court, and as to so much as is thus abandoned, the assessment of damages shall
33 be void.

**523.094. The state or any political subdivision thereof shall not
2 exercise the power of eminent domain to acquire property for the
3 purpose of economic development. For the purpose of this section,
4 "economic development" means any activity performed to increase tax
5 revenue, tax base, employment rates, or general economic health, when
6 the activity does not result in the transfer of property to:**

- 7 (1) Public ownership;
- 8 (2) A private entity that is a common carrier;
- 9 (3) A public utility, rural electric cooperative, or municipally-
10 owned utility.

**523.110. When any entity with condemnation authority negotiates
2 with a property owner to acquire any property interest which may
3 eventually be acquired through formal eminent domain proceedings, the
4 condemning entity shall provide the owner of the property a form
5 containing a written summary of the rights of an owner of property to
6 be acquired under this chapter via certified mail return receipt
7 requested. If the condemning entity does not supply the owner of the
8 real property with this form, a presumption shall exist that any sale or**

9 contract entered into between the condemning entity and the owner was
10 not voluntary and the condemning entity may be held responsible for
11 any relief, if any, as the court may determine to be appropriate
12 considering all of the facts and circumstances, including, but not limited
13 to, an award of punitive damages.

523.120. 1. Before proceeding to acquire any property interest by
2 condemnation, a condemning entity must give notice of such intent,
3 together with a description of the property interest to be acquired,
4 notice of the property owners' right to a hearing, and notice that the
5 decision determined at that hearing may be appealed, to be heard by a
6 jury of peers, to anyone having an interest of record in the property
7 involved. Such notice shall advise that the condemning authority shall
8 pay the reasonable costs of an appraisal pursuant to subsection 2 of this
9 section. Such notice, however, need not be given to any of such persons
10 who cannot be found by the condemning authority upon the exercise of
11 due diligence. Upon receipt of such notice, such persons may employ an
12 appraiser of their choosing to appraise the property interest to be
13 acquired. Such appraisal shall be made using sound, fair, and
14 recognized appraisal practices which are consistent with law, and which
15 shall consider, but are not limited to the following factors:

- 16 (1) Comparable sales in the area;
- 17 (2) Appraisal value of like property in the area;
- 18 (3) Term of ownership of property by current owner;
- 19 (4) Current use of property and future use of property;
- 20 (5) Availability of like property in the area;
- 21 (6) Anticipated financial gain from proposed future use.

22 The value of the land or property actually taken shall be equal to the
23 fair market value with upward adjustments for the factors listed in
24 subdivisions (1) to (6) of this subsection. Within ninety days of the date
25 of such notice, such persons may submit to the condemning authority a
26 copy of such appraisal. The condemning authority shall, immediately
27 upon receipt thereof, submit to such persons copies of its appraisals. If
28 the property interest is being acquired in relation to a federal aid
29 project, the appraisals submitted by the condemning authority shall be
30 those which have been approved by it pursuant to applicable statutes
31 and regulations, if such approval is required. All such appraisals may
32 be used by the parties to negotiate in good faith for the acquisition of

33 the property interest, but only the condemning authority shall be bound
34 by such appraisals.

35 2. If an appraisal is submitted to the condemning entity in
36 accordance with the provisions of subsection 1 of this section, the
37 condemning entity shall pay the reasonable costs of such appraisal. If
38 more than one person is interested in the property sought to be acquired
39 and such persons cannot agree on an appraisal to be submitted under
40 subsection 1 of this section, the condemning entity shall be relieved of
41 any obligation imposed upon it to pay for such appraisals as may be
42 submitted to it pursuant to this section.

43 3. Nothing in this section shall be construed as limiting in any
44 way the obligation of the condemning entity to negotiate in good faith
45 for the acquisition of any property interest sought prior to instituting
46 eminent domain proceedings or as limiting in any way the discovery
47 rights of parties to eminent domain proceedings.

48 4. Nothing in this section shall prevent the condemning entity
49 from complying with federal and state requirements to qualify the
50 authority for federal aid grants.

51 5. A condemning entity shall not make an offer to purchase the
52 property or property interest that is less than the fair market value the
53 condemning entity has established for the property or property interest
54 pursuant to the appraisal required in subsection 1 of this section. A
55 condemning entity need not make an offer in excess of that amount in
56 order to satisfy the requirement to negotiate in good faith.

57 6. No later than ten days before the formal filing of a petition
58 under section 523.010, the condemning entity must make a written offer
59 to purchase the desired property or property interest.

60 7. Upon submitting an offer complying with the requirements of
61 subsection 6 of this section, the condemning entity shall file a copy of
62 such offer in the office of the recorder of deeds in the county in which
63 the property or property interest is located on the same day as which it
64 submits such offer to the condemnee.

65 8. If the condemning entity and the condemnee fail to reach
66 agreement and the action proceeds to trial before a commissioner, as
67 provided by section 523.040, or before a jury, and the amount of damages
68 awarded the condemnee by the judgment, exclusive of interest and costs,
69 is twenty-five percent greater than the amount specified in the offer

70 made under subsection 6 of this section, the court shall order the
71 condemning entity to pay the condemnee's attorney's fees and court
72 costs.

523.125. If any condemnor fails to initiate construction,
2 improvement, or otherwise fails to utilize the condemned property for
3 the stated public use within forty-eight months of its acquisition, the
4 former owner of the property or a beneficiary or an heir, if a beneficiary
5 or heir has been designated for this purpose, shall have the right of first
6 refusal to reacquire the property for the compensated amount or the fair
7 market value of the property, whichever is less. The provisions of this
8 section shall not apply to the state highways and transportation
9 commission. The state highways and transportation commission shall
10 be governed by the time frame delineated in section 226.297, RSMo.

523.205. 1. Any public agency as defined in section 523.200 which is
2 required, as a condition to the receipt of federal funds, to give relocation
3 assistance to any displaced person is hereby authorized and directed to give
4 similar relocation assistance to displaced persons when the property involved is
5 being acquired for the same public purpose through the same procedures, and is
6 being purchased solely through expenditure of state or local funds.

7 2. The governing body of any city, or agency thereof, prior to approval of
8 a plan, project or area for redevelopment under the operation of chapter 99,
9 RSMo, chapter 100, RSMo, or chapter 353, RSMo, **or any other political**
10 **subdivision initiating condemnation proceedings**, which proposes or
11 includes within its provisions or necessitates displacement of persons, when such
12 displacement is not subject to the provisions of the Federal Uniform Relocation
13 and Real Property Acquisition Policies Act of 1970 (42 U.S.C. sections 4601 to
14 4655, as amended) or subsection 1 of this section, shall establish by ordinance or
15 rule a relocation policy which shall include, but not be limited to, the provisions
16 and requirements of subsections 2 to 15 of this section, or in lieu thereof, such
17 relocation policy shall contain provisions and requirements which are equivalent
18 to the requirements of the Federal Uniform Relocation Assistance and Real
19 Property Acquisition Policies Act of 1970 (42 U.S.C. sections 4601 to 4655, as
20 amended).

21 3. As used in this section, the following terms shall mean:

22 (1) "Business", any lawful activity that is conducted:

23 (a) Primarily for the purchase, sale or use of personal or real property or
24 for the manufacture, processing or marketing of products or commodities; or

25 (b) Primarily for the sale of services to the public;

26 (2) "Decent, safe and sanitary dwelling", a dwelling which meets
27 applicable housing and occupancy codes. The dwelling shall:

28 (a) Be structurally sound, weathertight and in good repair;

29 (b) Contain a safe electrical wiring system;

30 (c) Contain an adequate heating system;

31 (d) Be adequate in size with respect to the number of rooms needed to
32 accommodate the displaced person; and

33 (e) For a handicapped person, be free of any barriers which would
34 preclude reasonable ingress, egress or use of the dwelling;

35 (3) "Handicapped person", any person who is deaf, legally blind or
36 orthopedically disabled to the extent that acquisition of another residence
37 presents a greater burden than other persons would encounter or to the extent
38 that modifications to the replacement residence would be necessary;

39 (4) "Initiation of negotiations", the delivery of the initial written offer of
40 just compensation by the acquiring entity, to the owner of the real property, to
41 purchase such real property for the project, or the notice to the person that he
42 will be displaced by rehabilitation or demolition;

43 (5) "Person", any individual, family, partnership, corporation, or
44 association.

45 4. Every urban redevelopment corporation acquiring property within a
46 redevelopment area shall submit a relocation plan as part of the redevelopment
47 plan.

48 5. Unless the property acquisition under the operation of chapter 99,
49 RSMo, chapter 100, RSMo, or chapter 353, RSMo, is subject to federal relocation
50 standards or subsection 1 of this section, the relocation plan shall provide for the
51 following:

52 (1) Payments to all eligible displaced persons, as defined, who occupied
53 the property to be acquired for not less than ninety days prior to the initiation of
54 negotiations who are required to vacate the premises;

55 (2) A program for identifying special needs of displaced persons with
56 specific consideration given to income, age, size of family, nature of business,
57 availability of suitable replacement facilities and vacancy rates of affordable
58 facilities;

59 (3) A program for referrals of displaced persons with provisions for a
60 minimum of three decent, safe and sanitary housing referrals for residential
61 persons or suitable referral sites for displaced businesses, a minimum of ninety

62 days' notice of referral sites for handicapped displaced persons and sixty days'
63 notice of referral sites for all other displaced persons prior to the date such
64 displaced persons are required to vacate the premises, and arrangements for
65 transportation to inspect referral sites; and

66 (4) Every displaced person shall be given a ninety-day notice to vacate,
67 prior to the date such displaced person is required to vacate the premises.

68 6. All displaced residential persons eligible for payments shall be provided
69 with relocation payments based upon one of the following, at the option of the
70 person:

71 (1) A five-hundred-dollar fixed payment; or

72 (2) Actual reasonable costs of relocation including actual moving costs,
73 utility deposits, key deposits, storage of personal property up to one month, utility
74 transfer and connection fees and other initial rehousing deposits including first
75 and last month's rent and security deposit.

76 7. All displaced businesses eligible for payments shall be provided with
77 relocation payments based upon the following, at the option of the business:

78 (1) A one-thousand-five-hundred-dollar fixed payment; or

79 (2) Actual costs of moving including costs for packing, crating,
80 disconnection, dismantling, reassembling and installing all personal equipment
81 and costs for relettering similar signs and similar replacement stationery.

82 8. If a displaced person demonstrates the need for an advance relocation
83 payment, in order to avoid or reduce a hardship, the developer or public agency
84 shall issue the payment subject to such safeguards as are appropriate to ensure
85 that the objective of the payment is accomplished. Payment for a satisfactory
86 claim shall be made within thirty days following receipt of sufficient
87 documentation to support the claim. All claims for relocation payment shall be
88 filed with the displacing agency within six months after:

89 (1) For tenants, the date of displacement;

90 (2) For owners, the date of displacement or the final payment for the
91 acquisition of the real property, whichever is later.

92 9. Any displaced person, who is also the owner of the premises, may waive
93 relocation payments as part of the negotiations for acquisition of the interest held
94 by such person. Such waiver shall be in writing, shall disclose the person's
95 knowledge of the provisions of this section and his entitlement to payment and
96 shall be filed with the acquiring public agency.

97 10. All persons eligible for relocation benefits shall be notified in writing
98 of the availability of such relocation payments and assistance, with such notice

99 to be given concurrently with the notice of referral sites as required in subdivision
100 (3) of subsection 5 of this section.

101 11. Any urban redevelopment corporation, its assigns or transferees,
102 which have been provided any assistance under the operation of chapter 99,
103 RSMo, chapter 100, RSMo, chapter 353, RSMo, or this chapter, with land
104 acquisition by the local governing body, shall be required to make a report to the
105 local governing body or appropriate public agency which shall include, but not be
106 limited to, the addresses of all occupied residential buildings and structures
107 within the redevelopment area and the names and addresses of persons displaced
108 by the redeveloper and specific relocation benefits provided to each person, as well
109 as a sample notice provided to each person.

110 12. An urban redevelopment corporation which fails to comply with the
111 relocation requirements provided in this section shall not be eligible for tax
112 abatement as provided for in chapter 353, RSMo.

113 13. The requirements set out in this section shall be considered minimum
114 standards. In reviewing any proposed relocation plan under the operation of
115 chapter 99, RSMo, chapter 100, RSMo, or chapter 353, RSMo, the local governing
116 body or public agency shall determine the adequacy of the proposal and may
117 require additional elements to be provided.

118 14. Relocation assistance shall not be provided to any person who
119 purposely resides or locates his business in a redevelopment area solely for the
120 purpose of obtaining relocation benefits.

121 15. The provisions of sections 523.200 and 523.205 shall apply to land
122 acquisitions under the operation of chapter 99, RSMo, chapter 100, RSMo, or
123 chapter 353, RSMo, filed for approval, approved or amended on or after August
124 31, 1991, **or any other land acquisition obtained under the provisions of**
125 **this chapter.**

Section B. The enactment of section 523.094 of this act shall become
2 effective only upon approval by the voters of an amendment to section 26 of
3 article I of the Constitution of Missouri that provides that private property may
4 only be taken when necessary for the possession, occupation, or enjoyment of land
5 by the public, or by public agencies, utilities, or common carriers, and upon
6 approval by the voters of an amendment to repeal section 21 of article VI of the
7 Constitution of Missouri.

Unofficial

Bill

Copy