

SECOND REGULAR SESSION

SENATE BILL NO. 711

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR GOODE.

Pre-filed December 1, 2001, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

2457S.02I

AN ACT

To repeal sections 88.010, 88.013, 88.027, 88.030, 88.040, 88.043, 88.047, 88.050, 88.053, 88.057, 88.060, 88.063 and 88.073, RSMo, relating to condemnation proceedings for towns or villages, and to enact in lieu thereof twenty-seven new sections relating to the same subject.

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

Section A. Sections 88.010, 88.013, 88.027, 88.030, 88.040, 88.043, 88.047, 88.050, 88.053, 88.057, 88.060, 88.063 and 88.073, RSMo, are repealed and twenty-seven new sections enacted in lieu thereof, to be known as sections 88.010, 88.013, 88.027, 88.030, 88.040, 88.043, 88.047, 88.050, 88.053, 88.057, 88.060, 88.063, 88.073, 88.980, 88.983, 88.986, 88.989, 88.992, 88.995, 88.998, 88.1001, 88.1004, 88.1007, 88.1010, 88.1013, 88.1016 and 88.1019, to read as follows:

88.010. Whenever the city council, or the proper legislative body of any city, **town or village**, shall deem it necessary to condemn or appropriate private property and to assess the cost thereof against property in a benefit district, said legislative body shall enact an ordinance setting forth the general nature or purpose of the use to which such private property is to be put and declare it to be necessary to take and appropriate private property therein described for such purpose and define the limits of a benefit district within which private property shall be deemed benefited or assessed to pay for such improvements, and the time and mode of payment of such assessment and the penalty for failure to pay the

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

same when due.

88.013. Thereupon the attorney for the city, **town or village**, in the name of the city, **town or village**, shall apply to the circuit court of the county where the city, **town or village** is located, by petition, setting forth the limits of the benefit district, a correct description of the property that is sought to be acquired or condemned, the use for which such land is to be taken and dedicated or the general nature of the improvements proposed to be made, the names of the owners of the several lots, tracts or parcels of land if known, or if unknown a correct description of the parcels whose owners are unknown, and praying the appointment of three disinterested commissioners, who are residents of the county, in which the real estate or a portion thereof is situated, to assess the damages which the owners may severally sustain by reason of the appropriation and condemnation of such real estate by the city, **town or village** for any of the purposes described in this section, and to assess the property especially benefited by the improvements within the benefited district, in proportion to the benefits accruing to each from the proposed improvements.

88.027. 1. The commissioners so appointed shall give notice to all parties interested of the time and place when and where they will hear all parties interested who may appear before them, which notice need not be directed to any particular defendant or party interested, but may be general in its form, giving the number, title and date of approval of the ordinance initiating the proceedings and a description of the benefited district by boundaries as defined in the ordinance. Such notice shall be published in some newspaper in said city, **town or village**, selected by the commissioners, once each week for two consecutive weeks, the last insertion to be at least one day before the day set for such hearing.

2. It shall be the duty of the commissioners to first determine the value of the property to be appropriated, and all damages caused by said appropriation; then they shall apportion the total sum to be paid for the property condemned and damages so determined among the various lots, tracts and parcels of land within the benefited district, and the city, **town or village**, according to the actual benefits which they find will accrue to the various lots, tracts and parcels of land within said benefited district and to the city, **town or village** at large. They shall not be required to assess any sum against any lot, tract or parcel of land within the benefited district which they may find will not be benefited, nor shall they be required to assess any sum against the city, **town or**

village unless they find that the city, **town or village** at large will be benefited. Any action taken by a majority of the commissioners shall be deemed the act of all.

88.030. When the commissioners shall have viewed the property and assessed the value, damages and benefits they shall make their return of such assessment in writing and under oath to the circuit court. The report shall be filed with the clerk of the court and shall set out the amounts allowed for each lot, tract or parcel of land condemned and the amounts assessed against the various lots, tracts and parcels of land, and the city, **town or village**, if any, to pay for the land condemned, stating such amounts separately and giving a description of each lot, tract or parcel of land condemned or assessed.

88.040. Appeals from the final judgment of the court on jury verdicts shall be allowed to any defendant, defendants or the city, **town or village** as in condemnation proceedings by railroad companies, and shall be controlled and governed by the same rules as far as the same may be applicable. But no such appeal shall operate as a supersedeas or delay the right of the city, **town or village** to take possession of the property condemned.

88.043. If the amount of damages finally allowed by the court or jury shall be greater than the amount allowed by the commissioners, the excess shall be paid by the city, **town or village** and the assessments against the property benefited and against the city, **town or village**, if any, as made by the commissioners, shall remain the same, but if the amount of damages finally allowed shall be less than the amount allowed by the commissioners all assessments made by the commissioners shall be reduced proportionately.

88.047. When no requests for jury trials are filed within the time limited, or when the allowances of damages have been finally determined, the clerk shall make a report of the result of the proceedings showing the amount of damages finally allowed for each lot, tract or parcel of land to be appropriated, describing the same, and showing the amounts finally charged against the various lots, tracts and parcels of land for benefits, describing the same and the amount assessed against the city, **town or village** at large, if any, and the amount of excess to be paid by the city, **town or village**, if any, under [his] **the clerk's** hand and the seal of the court, and file the same with the papers in the case. [He] **The clerk** shall also make a copy of said report, duly certified, which the sheriff shall deliver to the city, **town or village** clerk and the sheriff shall make his return on the original showing such service and the date thereof.

88.050. The city, **town or village** shall, by ordinance, confirm or reject the report mentioned in section 88.047 within thirty days after delivery of the said certified copy to the city, **town or village** clerk and shall file a certified copy of such ordinance with the clerk of the circuit court within ten days after the taking effect of such ordinance. Failure of the city, **town or village** to take action upon such report within the time limited shall be deemed a rejection of same. If such report is rejected in either manner, the proceedings shall be dismissed and no proceedings to condemn any of said property for the same or any similar purpose shall be instituted by the city, **town or village** within two years after the rejection of the report, unless upon the petition of the owners of three-fourths of the property fronting on the line of the proposed improvement.

88.053. The judge shall allow the commissioners and court officials reasonable compensation for their services, which, together with all other costs accruing up to and including confirmation of the commissioners' report, shall be paid by the city, **town or village**. All costs accruing after said time shall be paid by the losing party.

88.057. When the council shall confirm the proceedings, judgment shall be rendered that the city, **town or village** have and hold the property so to be taken upon payment of the compensation assessed therefor, for the purpose specified in the initiatory ordinance, that the city, **town or village** recover the respective amounts assessed against private property, and that the lots, tracts and parcels of land so assessed for benefits stand severally charged and bound for the payment of the respective assessments and the interest that may accrue thereon, and the city, **town or village** pay the amount, if any, charged against it, and if said assessments are by the ordinance aforesaid made payable in more than one installment the judgment shall so recite. The city, **town or village** shall not have the right to take possession of the property condemned until it has paid to the owners, or to the clerk of the court for the use of said owners, the amount of damages determined as aforesaid.

88.060. 1. Said assessments for benefits shall be a lien from the date of the taking effect of the initiatory ordinance and shall continue until the assessment against such lot, tract or parcel of land has been fully paid or a sale made thereunder. No assessment shall be defeated or affected by any irregularity affecting only other assessments. In case of failure of the proceedings as to any part of the land to be condemned supplementary proceedings may be had as to such part. Damages allowed and benefits assessed shall bear interest from the

date of final judgment until paid at the rate of six percent per annum, but in case of any deficiency in the interest collected upon benefit assessments, the city, **town or village** shall pay the deficit. In case of failure to collect any assessments in full or in part by failure of the property to sell for a sufficient price to fully pay same and costs of sale, or otherwise, the city, **town or village** shall pay the amount of such deficit or loss. The city, **town or village** may pay all or any part of the assessments and have execution therefor in its own right.

2. Special executions may be issued against any property assessed for benefits at the instance of the city, **town or village** or of any party entitled to damages under the judgment, and such special execution shall be entitled as the case is docketed without naming any owner of the property, and proceedings thereon and sale thereunder shall be governed by the ordinary rules applicable to special executions against real estate. Payments shall be made to the clerk of the court in which the judgment is rendered, and if made at different times the clerk may disburse the same by prorating the amount or amounts so received by him among the various lots, tracts or parcels of land for which damages have been allowed, in proportion to the allowance for each, and paying the respective amounts to the owner thereof.

88.063. Any city, **town or village** shall have the right to advance the amount of damages awarded on the filing of the report of the commissioners assessing the damages and thereupon enter upon and take possession of such property and proceed with the public improvements for which such property is sought to be taken or damaged, and to be reimbursed from the benefits assessed when the same are collected. Any subsequent proceedings shall affect only the amount of compensation to be allowed for the property taken or damaged and shall not in any way interfere with the right of such city, **town or village** to the property sought to be acquired or damaged for public purposes.

88.073. 1. Cities, **towns or villages** shall have the right to condemn lands under the provisions of sections 88.010 to 88.070 and pay for the same out of any funds available out of the city, **town or village** treasury without any assessments for benefits, or to advance the amount of damages awarded at the time pending the proceedings and thereupon take possession of the property and to be reimbursed from the benefits assessed when the same are collected.

2. Whenever the charter of any constitutional charter city makes provision for the condemnation of property for public purposes and assessment of benefits therefor, such city may elect to proceed with such condemnation or assessment,

or both, in the manner provided in sections 88.010 to 88.070 or to proceed in the manner provided in its charter.

88.980. Private property may be taken by towns and villages, for public use, for the purpose of establishing, opening, widening, extending or altering any street, avenue, alley, wharf, creek, river, watercourse, marketplace, public park, or public square, and for establishing market houses and for any other necessary public purposes.

88.983. 1. The towns and villages coming under the provisions of sections 88.980 to 88.1019 in their corporate capacities are authorized and empowered to enact ordinances for the following purposes in addition to the other powers granted by law:

(1) To levy and collect taxes for general revenue purposes on all mixed, personal and real property within the limits of said town or village, taxable according to the laws of this state;

(2) To open and improve streets, avenues, alleys and other highways, and to make sidewalks and build bridges, culverts, drains and sewers within the town or village, and to establish grades for all improvements herein mentioned.

2. Such ordinances as may relate to any public work or improvements of any kind shall authorize the particular work to be done or improvements to be made, and shall specify the general character and extent thereof, the material to be used therein and in the alternative, if desirable, and the manner and regulations under which any such public work or improvement shall be executed.

3. Towns and villages shall have and exercise exclusive control over all streets, alleys, avenues and public highways within the limits of such town or village.

88.986. The board of trustees shall have power to create, open and improve any public square, public park, street, avenue, alley or other highway, old or new, and also to vacate or discontinue the same whenever deemed necessary or expedient; provided, that all damages sustained by the citizens of the town or village or the owners of the property therein shall be ascertained as prescribed in that portion of this chapter relating to the condemnation of private property for public use; and provided further, that whenever any public square, street,

avenue or alley, or other highway, shall be vacated, the same shall revert to the owners of the adjacent lots in proportion as it was taken from them; and when the grade of any street or alley shall have been once established by ordinance, it shall not be lawful to change such grade without making compensation to all persons owning real estate on such street or square, avenue, alley or other highway, who may be damaged by such change of grade, to be determined and governed in all respects, with reference to benefit and damages, as is provided in sections 88.980 to 88.1019.

88.989. The cost of bringing to grade all streets, avenues, alleys and other highways, and for the building of bridges, culverts, public sewers and footwalks across streets, avenues, alleys and other public highways, shall be paid out of the general revenue fund of the town or village.

88.992. The cost of paving, macadamizing, guttering and curbing (where such curb is set out into the street beyond the sidewalks) all streets, avenues, alleys and other highways, or any part thereof or any connection therewith, and repairing the same, and for doing all excavating and grading necessary for the same, after said streets, avenues, alleys and other highways, or parts thereof or connections therewith, have been first brought to grade, as provided in section 88.983, shall be levied as a special assessment upon all lots and pieces of ground upon either side of such street, avenue, alley or other highway, or part thereof or connection therewith, abutting thereon, along the distance improved, in proportion to the front foot; provided, that the cost of paving, macadamizing, curbing and guttering any street, avenue, alley or highway, or any part thereof, and the cost of repairing and cleaning of the same and of making and repairing sidewalks may be paid out of the general revenue fund of the town or village or other funds which the town or village may have for such purposes, if the board of trustees so desires, in which case the proceedings of the town or village for such improvements shall specify that payment will be made out of the general revenue funds or other funds in whole or in part.

88.995. The cost of paving or macadamizing the squares and areas as formed by the crossing or meeting of streets and other

highways within said town or village, or parts thereof or connections therewith, shall be levied as a special assessment, and paid for as follows: Such area shall be divided into parts or portions by lines drawn lengthwise along the middle of each of said streets or highways so intersecting or meeting, and the cost of said parts or portion shall be levied as a special assessment against the block or square contiguous to each, and prorated against the lots or pieces of ground in such block or square abutting on the street improved.

88.998. When the board of trustees shall deem it necessary to pave, macadamize, gutter, curb (when such is set out in the street beyond the sidewalk) or otherwise improve any street, avenue, alley or other highway, or any part thereof, within the limits of the town or village for which a special tax is to be levied as herein provided, the board of trustees shall, by resolution, declare the work or improvements necessary to be done, and cause the resolutions to be published in some newspaper published in the town or village for seven consecutive insertions in a daily paper or two consecutive insertions in a weekly paper. If a majority of the owners of the property liable to taxation therefor, residing in the town or village at the date of the passage of such resolution, shall not, within ten days from the date of the last insertion of the resolution, file with the town or village clerk their protest against, then the board of trustees may cause the improvements to be made, and to contract therefor, and to levy the tax as herein provided. The findings of the board that a majority of such owners have not filed protest shall be conclusive and final. No publication shall be necessary for the making of any sidewalks, but upon the petition of any ten citizens of the town or village, the board of trustees may make contracts for the construction of sidewalks, including grading therefor, with or without curbing, along any street, avenue or other public highway, or any part thereof whatever. The contract shall be let to the lowest and best bidder, upon plans and specifications filed therefor by the town or village engineer or other officer designated by the board of trustees, with the town or village clerk, not less than one week's advertisement for bids thereupon being made in some newspaper published in the town or village. When upon proper advertisement no bid is received, the board of trustees may

proceed as provided for cities of the third and fourth classification pursuant to section 88.826.

88.1001. No formality shall be required to authorize the repairing of sidewalks, or of street or other paving, curbing, guttering, macadamizing or part thereof, or reconstructing the same, and making assessments therefor; but the proper officer or committee on improvements may, without notice, cause such work to be done, keeping an account of the cost thereof, and reporting the same to the board of trustees for assessment; and each lot or piece of ground abutting on such sidewalk, street, avenue, or alley, or part thereof, shall be liable for its part of the cost of any work or improvement provided for in section 88.998 and this section, done or made along or in front of such lot or piece of ground as reported to the board of trustees, and all lands, lots and public parks owned by any county, city, town or village, and all other public lands, all cemeteries, owned by public, private or municipal corporations; provided, that nothing in this section shall be construed to authorize any assessment against any cemetery lot, and all railroad rights-of-way fronting or abutting on any of said improvements shall be liable for their proportionate part of the cost of such work and improvements, and tax bills shall be issued against said property as against other property, and any county, city, town or village that shall own any such property shall out of the general revenue funds pay any such tax bill, and in any case where any county, city, town or village or railroad company shall fail to pay any such tax bill, the owner of the same may sue such county, city, town or village or railroad company on such tax bill and be entitled to recover a general judgment against such county, city, town or village or railroad company. Any of said improvements to be paid for by such town or village may be paid for by said town or village out of the general revenue funds if the board of trustees so desires, but all such work and improvements shall be paid for with special tax bills unless the proceedings of the town or village for the same specify that payment will be made out of the general revenue funds of said town or village. The board of trustees may provide a penalty for failure to pay such special tax within a given time, and any tax bills issued in payment of such repairs shall constitute a lien upon the property liable

therefor until paid. All costs for building and constructing sidewalks shall be paid to the contractor therefor, in special tax bills assessed against the abutting property liable therefor, and such tax bills shall constitute a lien upon such property until paid, and shall bear interest at eight percent per annum from the date of issue.

88.1004. When the board of trustees of any town or village shall deem it necessary to pave, macadamize, gutter, curb, grade or otherwise improve the roadway of any street or avenue for a distance not more than twelve hundred feet in length so as to connect at both ends with paving, macadamizing, guttering, curbing, grading or other improvements either on the same street or avenue or other streets or avenues, or on the same street or avenue and another street or avenue, the board of trustees shall declare such work to be necessary to be done and shall cause the same proceedings to be had as are provided in section 88.998, except no protest may be filed. The resolution passed and published shall state the fact that anyone desiring to do so may appear before the board of trustees at a time stated therein and be heard on the question of the necessity of the work sought to be done, and if anyone does so appear he shall be heard, and the board of trustees shall, by resolution, state the result of such hearing to be a reaffirmance of the necessity for the doing of such work or the contrary, as the board of trustees may then decide. If no one appears, or if the board of trustees reaffirm the necessity of the doing of such work and improvement, then it shall proceed with such work and improvement in the manner in this chapter provided for such work and improvement when no sufficient protest against such improvement is filed within the time limited therefor.

88.1007. The board of trustees shall have power, by ordinance, to provide for and require the building and repairing of sidewalks and sidewalk curbing along any streets, avenues or highways of such town or village, the cost thereof to be levied as a special assessment on all lots or pieces of ground abutting on such improvements in proportion to the front foot thereof, and to impose a fine and penalty for the violation of such ordinance. Corner lots shall be liable for the extension of curbs and sidewalks to the curb lines each way.

88.1010. In addition to the powers herein granted, the board of

trustees may, by ordinance or resolution, condemn wooden and defective sidewalks, and may remove walks so condemned, and may provide for the construction of new sidewalks in the place of walks so condemned and removed.

88.1013. All real estate owned by a county and situate within the corporate limits of any town or village shall be subject to the provisions of all ordinances of such town or village which relate to the erection and maintenance of hitching posts, sidewalks, guttering, curbing, fences along streets and alleys, and the paving and macadamizing of streets to the same extent as that of private citizens of such town or village.

88.1016. It shall be the duty of the county commission whenever any of the improvements of the property set out in section 88.1013 is required by ordinance, to forthwith make such improvement fronting or abutting any real estate owned by the county and lying within the corporate limits of the town or village, and included in the terms of the ordinance, in compliance with the provisions of such ordinance, and pay for such improvements out of the general fund of the county.

88.1019. If the county commission shall fail, neglect or refuse to comply with the provisions of any ordinance providing for the improvement of property as provided in sections 88.1013 and 88.1016, for a period of sixty days after notice has been served on the county clerk, of the requirements of the ordinance and the kind and nature of the improvements to be made, the town or village shall proceed to make such improvements in the same manner as is provided by ordinance for the making of similar improvements by private citizens, and shall issue special tax bills for the cost of all labor and material necessary in making such improvements, and such special tax bills shall be a valid claim against such county, and it shall be the duty of the county commission at its next regular meeting after the completion of said improvements to audit, allow and pay out of the general fund of the county the cost of making said improvements or the special tax bills issued therefor.

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