

SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 185

AN ACT

To amend chapter 393, RSMo, by adding thereto one new section relating to certain trespass and inverse condemnation actions against public utilities.

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

Section A. Chapter 393, RSMo, is amended by adding thereto one new section, to be known as section 393.1800, to read as follows:

393.1800. 1. This section applies to any inverse condemnation or trespass cause of action, whether common law or statutory, brought against an electrical corporation, against a rural electric cooperative operating under chapter 394, or against a municipally owned or operated electric utility operating under chapter 91, where:

(1) The defendant has an easement in real property;
(2) The defendant uses the real property;
(3) The plaintiff alleges that the manner or extent of use by the defendant or the defendant's assignees is an expanded use that increases the burden of the defendant's easement, or that the use exceeds the scope of the defendant's easement rights;

(4) The use complained of involves the use of electric plant for broadband operations or broadband services, or the use of electric transmission lines or systems in providing access to broadband services; and

(5) The cause of action accrues on or after August 28, 2021.

2. Any cause of action for inverse condemnation described in subsection 1 of this section shall be commenced

within two years after the cause of action shall have accrued and in default thereof be barred, and to the extent that any general statute of limitations, including but not limited to sections 516.010, 516.110, and 516.120, any special statute of limitations, or the common law of this state, would extend the two-year period for commencing a cause of action for inverse condemnation described in subsection 1 of this section, the common law and any such statutes of limitation are hereby superseded and displaced.

3. Any cause of action for trespass described in subsection 1 of this section shall be commenced within two years after the cause of action shall have accrued and in default thereof be barred, and to the extent any general statute of limitations, including but not limited to sections 516.010, 516.110, and 516.120, any special statute of limitations, or the common law of this state, would extend the two-year period for commencing a cause of action for trespass described in subsection 1 of this section, the common law and any such statutes of limitation are hereby superseded and displaced.

4. In a cause of action for inverse condemnation described in subsection 1 of this section, if the plaintiff prevails, then the damage or taking shall be deemed permanent, the injury to the plaintiff shall not be deemed to continue, to accumulate, or to accrue, and the damages, past, present, and future, resulting therefrom, which shall always be greater than zero, shall be fixed and determined as of the date the expanded use that increased the burden of the defendant's easement, or use that exceeded the scope of the defendant's easement rights, initially occurred.

5. In a cause of action for trespass described in subsection 1 of this section, a defendant shall be entitled to a determination by the court as to whether the use by the

defendant or its assignees, alleged by the plaintiff to be an expanded use that increases the burden of the defendant's easement, or to exceed the scope of the defendant's easement rights, is a public use; and

(1) If the court finds that such use is a public use, and if the plaintiff prevails on the claim for trespass, then:

(a) The plaintiff shall not be granted an order of ejectment;

(b) The plaintiff shall not be granted any equitable remedies; and

(c) The trespass shall be deemed permanent, the injury to the plaintiff shall not be deemed to continue, to accumulate, or accrue, and the damages, past, present, and future, resulting therefrom, which shall always be greater than zero, and which may include damages for physical damage to the property caused by the defendant's wrongful use prior to suit, shall be fixed and determined as of the date the expanded use that increases the burden of the defendant's easement rights, initially occurred; or

(2) If the court finds such a use is not a public use, and if the plaintiff prevails on the claim of trespass, then nothing shall prevent a determination of whether such use is permanent or temporary, or prevent the plaintiff from pursuing remedies or relief not available under the provisions of subdivision (1) of this subsection.

6. If a plaintiff prevails in a cause of action described in subsection 1 of this section, then the finder of fact shall make a determination as to whether the expanded use that increased the burden of the defendant's easement or the use that exceeded the scope of the defendant's easement rights did, or did not, occur outside of the footprint of the defendant's easement. If the finder

of fact finds such wrongful use did not occur outside the footprint of the defendant's easement, then:

(1) The plaintiff shall not be entitled to, nor may the plaintiff be awarded, any punitive damages;

(2) The plaintiff shall not be entitled to, nor may the plaintiff be awarded, attorneys' fees, costs, or expenses, except as provided in subdivision (5) of this subsection;

(3) The court may treble the damages awarded, if any, by the finder of fact for physical damage to the property caused by the defendant's wrongful use prior to suit;

(4) Should the plaintiff prove to the court that such wrongful use by the defendant has prevented the plaintiff from using a portion or portions of the plaintiff's property lying exclusively within the footprint of the easement in substantially the same manner as such portion or portions were being utilized immediately prior to the wrongful use, then the court may increase the damages awarded to an amount not to exceed the lesser of:

(a) Treble the damages awarded by the finder of fact;
or

(b) The fair market value of the portion or portions of the plaintiff's property lying exclusively within the footprint of the easement that the plaintiff has been prevented, by the defendant's wrongful use, from using in substantially the same manner as the portion or portions were being utilized immediately prior to such wrongful use;

(5) In the alternative, and not in addition to subdivision (4) of this subsection, should the plaintiff prove to the court that such wrongful use by the defendant has prevented the plaintiff from using some portion or portions of the plaintiff's property that do not lie exclusively within the footprint of the easement in

substantially the same manner as such portion or portions were being utilized immediately prior to the wrongful use, then the court may award the plaintiff reasonable attorneys' fees, costs, and expenses.

7. To the extent the common law of this state or the provisions of any statute, including but not limited to sections 523.283 and subdivision (11) of subsection 1 of section 394.080, would entitle or permit a plaintiff prevailing in a cause of action described in subsection 1 of this section to receive relief or damages or pursue a remedy expressly prohibited in subsections 4, 5, or 6 of this section, the common law and any such other statutes are hereby superseded and displaced.

8. As used in this section, the following terms mean:

(1) "Broadband operations", operation of all or any portion of an electrical corporation's broadband infrastructure in a manner that can be used by broadband services providers to provide broadband services;

(2) "Broadband services":

(a) The provision of access to dark fiber within fiber optic cables, whether directly to end-use customers, or to third parties for the third party's subsequent provision of access to such dark fiber to end-use customers; or

(b) The provision to third parties who are not end-use customers, for the third party's subsequent provision to end-use customers, of connectivity, via lit fiber or other components of the broadband infrastructure, whether to a data or information transmission medium, or to a technology, and in either case for purposes of accessing the internet or providing other capabilities including, but not limited to, information sharing, information storage, information content, or protocol conversion;

(3) "Easement", includes express easements the terms of which have been reduced to writing, whether acquired voluntarily or by condemnation, as well as prescriptive easements, implied easements, and easements by estoppel; and

(4) "Footprint", the area or areas described in an express easement within the bounds of which the defendant easement holder may exercise easement rights granted, including rights of access, or if the area or areas are not described in the express easement or if the easement is other than an express easement, then the area or areas the locations and dimensions of which are determined by the court from evidence of the prior uses of the easement by the defendant easement holder and determined by the court to be reasonably necessary to accomplish the defendant easement holder's prior uses.

9. Upon the payment of an award of damages to a plaintiff who prevails in a cause of action described in subsection 1 of this section for inverse condemnation, or who prevails in a cause of action for a trespass where the court has determined that the expanded use that increased the burden of the defendant's easement or the use that exceeded the scope of the defendant's easement rights is a public use, the scope of the defendant's easement shall be permanently expanded to include the uses that, prior to the payment, were found to have increased the burden of the defendant's easement or exceeded the scope of the defendant's easement rights, including leasing, licensing, or otherwise permitting or agreeing to the uses by, another party; provided that thereafter, if the defendant in the exercise of its expanded easement rights should cause physical damage to the property, then the defendant shall, at the defendant's option, either cause the property to be restored to the condition it was in immediately prior to

causing the physical damage or pay damages to the property owner to compensate the property owner for such physical damage, except in the event that the physical damage causes an emergency in which case the property owner may proceed to restore the property to its condition prior to such damage and in which case the defendant shall be liable to the property owner for the property owner's reasonably incurred expenses of restoration.

10. Recognizing that individual characteristics of every parcel of land make every parcel unique, incapable of duplication, and of particular value, such that the damages awarded in any trespass or inverse condemnation involving real property shall be determined on an individualized, parcel by parcel basis, no cause of action described in subsection 1 of this section may be brought as an action on behalf of a class. The limitation in this subsection is a substantive limitation and allowing a person to bring a class action or other representative action would abridge, enlarge, or modify the substantive rights addressed by this section.

11. In a cause of action described in subsection 1 of this section, the following shall not be admissible in evidence, for purposes of determining the plaintiff's damages or any other purpose:

(1) Profits, fees, or revenue derived by the defendant from uses by the defendant or its assignees of the easement; and

(2) The rental value of the real property or of the easement, including the rental value of an assembled utility corridor of any type.

12. This section is intended to advance the state's interest in facilitating and accelerating citizens' access to broadband via the electrical system, on and over which

broadband infrastructure such as fiber optic cable, facilities, and technologies is already deployed to enhance the reliability, resilience, and security of the electrical system, by reducing the litigation risks involved when such broadband infrastructure is used for such purposes, while at the same time protecting citizens' property rights.