

FIRST REGULAR SESSION

# SENATE BILL NO. 185

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR BEAN.

1019S.01I

ADRIANE D. CROUSE, Secretary

## 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  
2 one new section, to be known as section 393.1700, to read as  
3 follows:

393.1700. 1. This section applies to any inverse  
2 condemnation or trespass cause of action, whether common law  
3 or statutory, brought against a public utility as such term  
4 is defined in section 386.020, rural electric cooperative  
5 operating under chapter 394, or municipally owned utility  
6 operating under chapter 91, where:

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

14 (4) The cause of action accrues on or after August 28,  
15 2021.

16 2. As used in this section, "public utility" shall not  
17 include any electrical corporation that has been granted a  
18 line certificate of convenience and necessity under

19 subsection 1 of section 393.170 to construct a high voltage,  
20 direct current transmission line, but whose rates for  
21 wholesale transmission service are not subject to regulation  
22 by the commission.

23 3. Any cause of action for inverse condemnation  
24 described in subsection 1 of this section shall be commenced  
25 within two years after the cause of action shall have  
26 accrued, and to the extent any general statute of  
27 limitations, including but not limited to sections 516.010,  
28 516.110, and 516.120, any special statute of limitations, or  
29 the common law of this state, would extend the period for  
30 commencing a cause of action described in subsection 1 of  
31 this section, the common law and any such statutes of  
32 limitation are hereby superseded and displaced.

33 4. Any cause of action for trespass described in  
34 subsection 1 of this section shall be commenced within two  
35 years after the cause of action shall have accrued, and to  
36 the extent any general statute of limitations, including but  
37 not limited to section 516.010, 516.110, and 516.120, any  
38 special statute of limitations, or the common law of this  
39 state, would extend the period for commencing a cause of  
40 action described in subsection 1 of this section, the common  
41 law and any such statutes of limitation are hereby  
42 superseded and displaced.

43 5. In a cause of action for inverse condemnation  
44 described in subsection 1 of this section, if the plaintiff  
45 prevails, then the damage or taking shall be deemed  
46 permanent, the injury to the plaintiff shall not be deemed  
47 to continue, accumulate or accrue, and the damages, past,  
48 present and future, resulting therefrom, which shall always  
49 be greater than zero, shall be fixed and determined as of  
50 the date the cause of action accrued.

51           6. In a cause of action for trespass described in  
52 subsection 1 of this section, a defendant shall be entitled  
53 to a determination by the court as to whether the use by the  
54 defendant or its assignees, alleged by the plaintiff to be  
55 an expanded use or to exceed the scope of the defendant's  
56 easement rights, is a public use. If the court finds that  
57 such use is a public use, and if the plaintiff prevails on  
58 the claim for trespass, then:

59           (1) The plaintiff shall not be granted an order of  
60 ejectment;

61           (2) The plaintiff shall not be granted any equitable  
62 remedies; and

63           (3) The trespass shall be deemed permanent, the injury  
64 to the plaintiff shall not be deemed to continue, accumulate  
65 or accrue, and the damages, past, present and future,  
66 resulting therefrom, which shall always be greater than  
67 zero, shall be fixed and determined as of the date the cause  
68 of action accrued.

69           7. If a plaintiff prevails in a cause of action  
70 described in subsection 1 of this section, then the finder  
71 of fact shall make a determination whether the defendant's  
72 expanded use that increased the burden of the defendant's  
73 easement or use by the defendant or its assignees that  
74 exceeded the scope of the defendant's easement rights did,  
75 or did not, occur outside of the footprint of the  
76 defendant's easement. If the finder of fact finds such use  
77 did not occur outside the footprint of the defendant's  
78 easement, then the plaintiff shall not be entitled to, nor  
79 may the plaintiff be awarded, any punitive damages,  
80 attorneys' fees, costs or expenses.

81           8. To the extent the common law of this state or the  
82 provisions of any statute, including but not limited to

83 sections 523.283 and subdivision (11) of section 394.080,  
84 would entitle or permit a plaintiff prevailing in a cause of  
85 action described in subsection 1 of this section to receive  
86 relief or damages or pursue a remedy expressly prohibited in  
87 subsections 5, 6, or 7 of this section, the common law and  
88 any such other statutes are hereby superseded and displaced.

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

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

94 (2) "Footprint", the area or areas described in an  
95 express easement within the bounds of which the defendant  
96 easement holder may exercise easement rights granted,  
97 including rights of access, or if the area or areas are not  
98 described in the express easement or if the easement is  
99 other than an express easement, then the area or areas the  
100 locations and dimensions of which are determined by the  
101 court from evidence of the prior uses of the easement by the  
102 defendant easement holder and determined by the court to be  
103 reasonably necessary to accomplish the defendant easement  
104 holder's prior uses.

105 10. Upon the payment of an award of damages to a  
106 plaintiff who prevails in a cause of action described in  
107 subsection 1 of this section, the scope of the defendant's  
108 easement shall be permanently expanded to include the use or  
109 uses of the easement by the defendant, that, prior to the  
110 payment, were found to have exceeded the scope of or  
111 increased the burden of the easement, and permanently  
112 expanded to include the non-exclusive right to lease or  
113 license to, or otherwise permit or agree to the use by,  
114 another party.

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

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

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

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

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