Session of 2025

HOUSE BILL No. 2187

By Representatives Fairchild, Barrett, Bloom, Chauncey, Corbet, Goddard, Poetter Parshall, Schmoe, Schwertfeger, Steele and Waggoner

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AN ACT concerning eminent domain; eliminating the power of the legislature to take private property for economic development; narrowing the definition of public use; requiring a good faith offer of compensation to a property owner prior to filing an eminent domain action; providing that if the good faith offer is greater than the appraiser's award, the greater amount may be subject to appeal only by the property owner; amending K.S.A. 26-501a, 26-501b, 26-502 and 26-507 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. (a) At least 30 days before filing a petition under K.S.A. 26-501 et seq., and amendments thereto, an agency as defined in K.S.A. 26-501a, and amendments thereto, shall provide notice by personal service to the owner of property that the agency intends to acquire the owner's property. The notice shall include a good faith offer of compensation for the property, which shall be the minimum award of compensation to the owner. The good faith offer shall not later be reduced or revoked by the agency, nor shall the agency present evidence or argument for a lesser amount of compensation in an appeal from an award notice under K.S.A. 26-508, and amendments thereto.

(b) If the agency makes a subsequent offer prior to the filing of the petition under K.S.A. 26-501 et seq., and amendments thereto, that is a greater amount than the initial good faith offer, the subsequent greater amount shall be the minimum award of compensation for such property.

Sec. 2. K.S.A. 26-501a is hereby amended to read as follows: 26-501a. On and after July 1, 2007: (a) Private property shall not be taken by eminent domain except for public use*,* and private property shall not be taken without just compensation.

(b) The taking of private property by eminent domain for the purpose of selling, leasing or otherwise transferring such property to any private entity is prohibited except as provided in K.S.A. 26-501b, and amendments thereto.

(c) *"Agency" includes the state and municipalities as defined in K.S.A. 75-6102, and amendments thereto, public utilities as defined in K.S.A. 66-104, and amendments thereto, and other entities listed in K.S.A.*

26-501b(b), and amendments thereto.

(d) "Public use" does not include the use of any property for recreational trails, which are trails used for hiking, bicycling, horseback riding or other forms of recreational travel.

(e) This section shall be *a* part of and supplemental to the eminent domain procedure act.

Sec. 3. K.S.A. 26-501b is hereby amended to read as follows: 26-501b. On and after July 1, 2007, the taking of private property by eminent domain for the purpose of selling, leasing, or otherwise transferring such property to any private entity is authorized if the taking is:

(a) By the Kansas department of transportation or a municipality and the property is deemed excess real property that was taken lawfully and incidental to the acquisition of right-of-way for a public road, bridge or public improvement project*,* including, but not limited to*,* a public building~~, park, recreation facility,~~ water supply project, wastewater and waste disposal project, storm water project and flood control and drainage project;

(b) by any public utility, as defined in K.S.A. 66-104, and amendments thereto, gas gathering service, as defined in K.S.A. 55-1,101, and amendments thereto, pipe-line companies, railroads and all persons and associations of persons, whether incorporated or not, operating such agencies for public use in the conveyance of persons or property within this state, but only to the extent such property is used for the operation of facilities necessary for the provision of services;

(c) by any municipality when the private property owner has acquiesced in writing to the taking;

(d) by any municipality for the purpose of acquiring property~~ which~~ *that* has defective or unusual conditions of title*,* including, but not limited to, clouded or defective title or unknown ownership interests in the property; *or*

(e) by any municipality for the purpose of acquiring property~~ which~~ *that* is unsafe for occupation by humans under the building codes of the jurisdiction where the structure is situated~~;~~

~~(f) expressly authorized by the legislature on or after July 1, 2007, by enactment of law that identifies the specific tract or tracts to be taken. If the legislature authorizes eminent domain for private economic development purposes, the legislature shall consider requiring compensation of at least 200% of fair market value to property owners~~.

~~(g)~~*(f)* This section shall be *a* part of and supplemental to the eminent domain procedure act.

Sec. 4. K.S.A. 26-502 is hereby amended to read as follows: 26-502. *Subject to section 1, and amendments thereto,* a petition shall include ~~allegations of~~*:* (1) *Clear and convincing evidence that the taking is*

necessary and for a public use, and the agency has the authority for ~~and the purpose of~~ the taking; (2) a description of each lot, parcel or tract of land and the nature of the interest to be taken; *and* (3) insofar as their interests are to be taken ~~(a)~~, the name of any owner and all lienholders of record~~,~~ and ~~(b)~~ the name of any party in possession. Such petition shall be verified by affidavit. Upon the filing of such petition, the court, by order, shall fix the time when ~~the same~~ *such petition* will be taken up. No defect in form ~~which~~ *that* does not impair substantial rights of the parties shall invalidate any proceeding.

Sec. 5. K.S.A. 26-507 is hereby amended to read as follows: 26-507. (a) *Payment of award; vesting of rights.* If the plaintiff desires to continue with the proceeding as to particular tracts the plaintiff, within 30 days from the time the appraisers' report is filed, shall pay to the clerk of the district court the amount of the appraisers' award *or the amount of the good faith offer, if greater, as provided in section 1, and amendments thereto,* as to those particular tracts and court costs accrued to date, including appraisers' fees. Such payment shall be without prejudice to plaintiff's right to appeal from the appraisers' award. Except as provided further, upon such payment being made, the title, easement or interest appropriated in the land condemned shall thereupon immediately vest in the plaintiff, and it shall be entitled to the immediate possession of the land to the extent necessary for the purpose for which taken and consistent with the title, easement or interest condemned. If such property contains a defendant's personal property, a defendant shall have 14 days from the date such payment is made to the clerk of the district court to remove such personal property from the premises. The plaintiff shall be entitled to all the remedies provided by law for the securing of such possession. The clerk of the district court shall notify the interested parties that the appraisers' award has been paid and that the defendant shall have 14 days from the payment date to remove personal property from the premises.

(b) *Abandonment.* If the plaintiff does not make the payment prescribed in subsection (a) for any of the tracts described in the petition, within 30 days, from the time the appraisers' report is filed, the condemnation is abandoned as to those tracts, and judgment for costs, including the appraisers' fees together with judgment in favor of the defendant for the reasonable expenses incurred in defense of the action, shall be entered against the plaintiff. After such payment is made by the plaintiff to the clerk of the court, as provided in subsection (a), the proceedings as to those tracts for which payment has been made can only be abandoned by the mutual consent of the plaintiff and the parties interested in the award.

Sec. 6. K.S.A. 26-501a, 26-501b, 26-502 and 26-507 are hereby repealed.

Sec. 7. This act shall take effect and be in force from and after its publication in the statute book.