

Substitute for SENATE BILL No. 323

AN ACT concerning eminent domain; relating to restriction of government authority to take property; performance of certain land surveys; amending K.S.A. 12-1306, 24-438, 24-467, 26-201, 26-501, 26-505, 26-507 and 72-8212a and K.S.A. 2005 Supp. 12-1773, 19-101a, as amended by section 16 of 2006 House Bill No. 2590, and 26-508 and repealing the existing sections.

WHEREAS, The Kansas and United States Supreme Courts have ruled that the taking and transferring of private property from one private party to another is a valid use of the power of eminent domain; and

WHEREAS, the people of Kansas support the protection of private property rights and seek to heighten the protection of private property rights from the level expressed by recent court rulings; and

WHEREAS, the people of Kansas agree that the use of eminent domain for the taking and transferring of private property from one private party to another should only be allowed in extraordinary and limited situations and with explicit procedural safeguards: Now therefore,

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

New Section 1. 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 section 2, and amendments thereto.

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

New Sec. 2. 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 has defective or unusual conditions of title including, but not limited to, clouded or defective title or unknown ownership interests in the property;

(e) by any municipality for the purpose of acquiring property which 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) This section shall be part of and supplemental to the eminent domain procedure act.

Sec. 3. On and after July 1, 2007, K.S.A. 2005 Supp. 12-1773 is hereby amended to read as follows: 12-1773. (a) Any city which has adopted a redevelopment project plan in accordance with the provisions of this act may purchase or otherwise acquire real property in connection with such project plan. Upon a  $\frac{2}{3}$  vote of the members of the governing body thereof a city may acquire by condemnation any interest in real property, including a fee simple title thereto, which it deems necessary for or in connection with any project plan of an area located within the redevelopment district; *however, eminent domain may be used only as authorized by section 2, and amendments thereto.* Prior to the exercise

of such eminent domain power, the city shall offer to the owner of any property which will be subject to condemnation with respect to any redevelopment project, other than one which includes an auto race track facility or a special bond project, compensation in an amount equal to the highest appraised valuation amount determined for property tax purposes by the county appraiser for any of the three most recent years next preceding the year of condemnation, except that, if in the year next preceding the year of condemnation any such property had been damaged or destroyed by fire, flood, tornado, lightning, explosion or other catastrophic event, the amount offered should be equal to the appraised valuation of the property which would have been determined taking into account such damage or destruction unless such property has been restored, renovated or otherwise improved. However no city shall exercise such eminent domain power to acquire real property in a conservation area. Any such city may exercise the power of eminent domain in the manner provided by K.S.A. 26-501 et seq., and amendments thereto. In addition to the compensation or damage amount finally awarded thereunder with respect to any property subject to proceedings thereunder as a result of the construction of an auto race track facility or a special bond project, such city shall provide for the payment of an amount equal to 25% of such compensation or damage amount. In addition to any compensation or damages allowed under the eminent domain procedure act, such city shall also provide for the payment of relocation assistance as provided in K.S.A. 12-1777, and amendments thereto.

(b) Any property acquired by a city under the provisions of this act may be sold, transferred or leased to a developer, in accordance with the redevelopment project plan and under such other conditions as may be agreed upon.

Sec. 4. On and after July 1, 2007, K.S.A. 2005 Supp. 19-101a, as amended by section 16 of 2006 House Bill No. 2590, is hereby amended to read as follows: 19-101a. (a) The board of county commissioners may transact all county business and perform all powers of local legislation and administration it deems appropriate, subject only to the following limitations, restrictions or prohibitions:

(1) Counties shall be subject to all acts of the legislature which apply uniformly to all counties.

(2) Counties may not consolidate or alter county boundaries.

(3) Counties may not affect the courts located therein.

(4) Counties shall be subject to acts of the legislature prescribing limits of indebtedness.

(5) In the exercise of powers of local legislation and administration authorized under provisions of this section, the home rule power conferred on cities to determine their local affairs and government shall not be superseded or impaired without the consent of the governing body of each city within a county which may be affected.

(6) Counties may not legislate on social welfare administered under state law enacted pursuant to or in conformity with public law No. 271—74th congress, or amendments thereof.

(7) Counties shall be subject to all acts of the legislature concerning elections, election commissioners and officers and their duties as such officers and the election of county officers.

(8) Counties shall be subject to the limitations and prohibitions imposed under K.S.A. 12-187 to 12-195, inclusive, and amendments thereto, prescribing limitations upon the levy of retailers' sales taxes by counties.

(9) Counties may not exempt from or effect changes in statutes made nonuniform in application solely by reason of authorizing exceptions for counties having adopted a charter for county government.

(10) No county may levy ad valorem taxes under the authority of this section upon real property located within any redevelopment project area established under the authority of K.S.A. 12-1772, and amendments thereto, unless the resolution authorizing the same specifically authorized a portion of the proceeds of such levy to be used to pay the principal of and interest upon bonds issued by a city under the authority of K.S.A. 12-1774, and amendments thereto.

(11) Counties shall have no power under this section to exempt from any statute authorizing or requiring the levy of taxes and providing substitute and additional provisions on the same subject, unless the resolution

authorizing the same specifically provides for a portion of the proceeds of such levy to be used to pay a portion of the principal and interest on bonds issued by cities under the authority of K.S.A. 12-1774, and amendments thereto.

(12) Counties may not exempt from or effect changes in the provisions of K.S.A. 19-4601 through 19-4625, and amendments thereto.

(13) Except as otherwise specifically authorized by K.S.A. 12-1,101 through 12-1,109, and amendments thereto, counties may not levy and collect taxes on incomes from whatever source derived.

(14) Counties may not exempt from or effect changes in K.S.A. 19-430, and amendments thereto.

(15) Counties may not exempt from or effect changes in K.S.A. 19-302, 19-502b, 19-503, 19-805 or 19-1202, and amendments thereto.

(16) (A) Counties may not exempt from or effect changes in K.S.A. 13-13a26, and amendments thereto.

(B) This provision shall expire on June 30, 2006.

(17) (A) Counties may not exempt from or effect changes in K.S.A. 71-301a, and amendments thereto.

(B) This provision shall expire on June 30, 2006.

(18) Counties may not exempt from or effect changes in K.S.A. 19-15,139, 19-15,140 and 19-15,141, and amendments thereto.

(19) Counties may not exempt from or effect changes in the provisions of K.S.A. 12-1223, 12-1225, 12-1225a, 12-1225b, 12-1225c and 12-1226, and amendments thereto, or the provisions of K.S.A. 12-1260 through 12-1270 and 12-1276, and amendments thereto.

(20) Counties may not exempt from or effect changes in the provisions of K.S.A. 19-211, and amendments thereto.

(21) Counties may not exempt from or effect changes in the provisions of K.S.A. 19-4001 through 19-4015, and amendments thereto.

(22) Counties may not regulate the production or drilling of any oil or gas well in any manner which would result in the duplication of regulation by the state corporation commission and the Kansas department of health and environment pursuant to chapter 55 and chapter 65 of the Kansas Statutes Annotated, and amendments thereto, and any rules and regulations adopted pursuant thereto. Counties may not require any license or permit for the drilling or production of oil and gas wells. Counties may not impose any fee or charge for the drilling or production of any oil or gas well.

(23) Counties may not exempt from or effect changes in K.S.A. 79-41a04, and amendments thereto.

(24) Counties may not exempt from or effect changes in K.S.A. 79-1611, and amendments thereto.

(25) Counties may not exempt from or effect changes in K.S.A. 79-1494, and amendments thereto.

(26) Counties may not exempt from or effect changes in subsection (b) of K.S.A. 19-202, and amendments thereto.

(27) Counties may not exempt from or effect changes in subsection (b) of K.S.A. 19-204, and amendments thereto.

(28) Counties may not levy or impose an excise, severance or any other tax in the nature of an excise tax upon the physical severance and production of any mineral or other material from the earth or water.

(29) Counties may not exempt from or effect changes in K.S.A. 79-2017 or 79-2101, and amendments thereto.

(30) Counties may not exempt from or effect changes in K.S.A. 2-3302, 2-3305, 2-3307, 2-3318, 17-5904, 17-5908, 47-1219, 65-171d, 65-1,178 through 65-1,199, and amendments thereto.

(31) Counties may not exempt from or effect changes in K.S.A. 2005 Supp. 80-121, and amendments thereto.

(32) Counties may not exempt from or effect changes in K.S.A. 19-228, and amendments thereto.

(33) Counties may not exempt from or effect changes in the wireless enhanced 911 act, in the VoIP enhanced 911 act or in the provisions of K.S.A. 12-5301 through 12-5308, and amendments thereto.

(34) Counties may not exempt from or effect changes in K.S.A. 2005 Supp. 26-601, and amendments thereto.

(35) (A) From and after November 15, 2005, counties may not exempt from or effect changes in the Kansas liquor control act except as provided by paragraph (B).

(B) From and after November 15, 2005, counties may adopt resolutions which are not in conflict with the Kansas liquor control act.

(36) (A) From and after November 15, 2005, counties may not exempt from or effect changes in the Kansas cereal malt beverage act except as provided by paragraph (B).

(B) From and after November 15, 2005, counties may adopt resolutions which are not in conflict with the Kansas cereal malt beverage act.

(37) *Counties may neither exempt from nor effect changes to the eminent domain procedure act.*

(b) Counties shall apply the powers of local legislation granted in subsection (a) by resolution of the board of county commissioners. If no statutory authority exists for such local legislation other than that set forth in subsection (a) and the local legislation proposed under the authority of such subsection is not contrary to any act of the legislature, such local legislation shall become effective upon passage of a resolution of the board and publication in the official county newspaper. If the legislation proposed by the board under authority of subsection (a) is contrary to an act of the legislature which is applicable to the particular county but not uniformly applicable to all counties, such legislation shall become effective by passage of a charter resolution in the manner provided in K.S.A. 19-101b, and amendments thereto.

(c) Any resolution adopted by a county which conflicts with the restrictions in subsection (a) is null and void.

Sec. 5. On and after July 1, 2007, K.S.A. 26-501 is hereby amended to read as follows: 26-501. (a) The procedure for exercising eminent domain, as set forth in K.S.A. 26-501 to ~~26-516, inclusive through 26-518 and sections 1 and 2, and amendments thereto,~~ shall be followed in all eminent domain proceedings.

(b) The proceedings shall be brought by filing a verified petition in the district court of the county in which the real estate is situated, except if it be an entire tract situated in two ~~(2)~~ or more counties, the proceedings may be brought in any county in which any tract or parts thereof is situated.

(c) *For the purposes of the eminent domain procedure act, unless the context clearly indicates a different meaning, the following terms shall have the following respective meanings:*

(1) *“Municipality” means city, county or unified government.*

(2) *“Taking” means the use by any authorized entity of the power of eminent domain to acquire any interest in private real property.*

Sec. 6. On and after July 1, 2007, K.S.A. 26-505 is hereby amended to read as follows: 26-505. After such appointment, the appraisers shall take an oath to faithfully discharge their duties as appraisers. The judge shall instruct the appraisers on matters including, but not limited to, the following: (1) That they are officers of the court and not representatives of the plaintiff or any other party, (2) that they are to receive their instructions only from the judge, (3) the nature of their duties and authority, (4) the basis, manner and measure of ascertaining the value of the land taken and damages resulting from such taking, (5) that, except for incidental contact for the purpose of verifying factual information relating to the subject real estate or to discuss scheduling matters, appraisers shall refrain from any *ex parte* meetings or discussions with representatives of the plaintiff or property owner without first advising the adverse party and providing such party with the opportunity to be present, and (6) that all written material provided to an appraiser or appraisers by a party shall be provided forthwith to the adverse party. The instructions shall be in writing. Upon the completion of their work the appraisers shall file the report in the office of the clerk of the district court and shall notify the condemner of such filing. The condemner, within three days after receiving such notice, shall mail a written notice of the filing of such report to every person who owns any interest in any of the property being taken, if the address of such person is known, and shall file in the office of the clerk of the district court an affidavit showing proof of the mailing of such notice. The fees and expenses of the appraisers shall be determined and ~~allowed~~ assessed by the court *against the plaintiff.*

Sec. 7. On and after July 1, 2006, K.S.A. 12-1306 is hereby amended to read as follows: 12-1306. Whenever it shall become necessary in any city to condemn or appropriate land within or without the limits of ~~said~~

*the city for public parks for the use and benefit of the people of ~~said city~~, and shall be so declared necessary by the council or by any board of city commissioners of ~~said city~~ the city and the governing body of the city declares it necessary to condemn or appropriate any private property; where for which the purchase price cannot be agreed upon with the owner of ~~said such~~ property, ~~said council or city commissioners shall then~~ the governing body of the city shall cause a survey to be made by ~~some competent engineer and said~~ a licensed land surveyor or a professional engineer who is competent to conduct a land survey, and such survey and description of ~~said the~~ land so required shall be filed with the city clerk; and. Thereupon ~~said council or board of city commissioners, the governing body of the city~~ shall make an order declaring the necessity of such appropriation and the purposes for which the ~~same~~ land is to be condemned or appropriated and a description of the ~~same~~ land as shown by ~~said the~~ survey, and all other and further proceedings necessary for the condemnation and appropriation of ~~said the~~ land shall be had and conducted as provided by law.*

Sec. 8. On and after July 1, 2006, K.S.A. 24-438 is hereby amended to read as follows: 24-438. Whenever it shall be deemed necessary to construct any levee across the right of way of any railroad company, and such railroad company shall be entitled to compensation therefor, the board of directors shall have the power to make such crossing or to condemn and appropriate so much of such right of way or land as may be necessary for that purpose in the manner hereinafter provided; and whenever it shall be deemed necessary to appropriate any private property for use by the district in widening, deepening or otherwise improving any natural watercourse to prevent the overflow thereof, or for the construction of any levee, canal, drain; or other work, the board of directors shall cause a survey and description of the land so required out of the right of way or lands of such railroad company or out of the lands of any private owner to be made by ~~some competent engineer~~ a licensed land surveyor or a professional engineer who is competent to conduct a land survey and filed with its secretary, and thereupon shall make an order declaring that the appropriation of such land is necessary and setting forth for what purpose the same is to be used. The board of directors, as soon as practicable thereafter, shall proceed to exercise the power of eminent domain in accordance with ~~K.S.A. 26-501 to 26-516, inclusive~~ the eminent domain procedure act.

Sec. 9. On and after July 1, 2006, K.S.A. 24-467 is hereby amended to read as follows: 24-467. Whenever it shall be deemed necessary to construct any ditch, levee, dike, jetty, riprap or other protective structure across or upon the land of any individual or corporation whether within or outside the territorial limits of the drainage district and such individual or corporation shall be entitled to compensation therefor, the board of directors shall have the power to construct such ditch, levee, dike, jetty, riprap or other protective structure or to condemn and appropriate so much of such land as may be necessary for that purpose in the manner hereinafter provided; and whenever it shall be deemed necessary to appropriate any private property for use by the district in widening, deepening or otherwise improving any natural watercourse to prevent the overflow thereof or for the construction of any ditch, dike, levee, jetty, riprap, canal, drain or other work, the board of directors shall cause a survey and description of the land so required out of the lands of any private owner (individual or corporation) to be made by ~~some competent engineer~~ a licensed land surveyor or a professional engineer who is competent to conduct a land survey and filed with its secretary, and thereupon shall make an order declaring that the appropriation of such land is necessary and setting forth for what purpose the same is to be used; and shall then proceed to exercise the power of eminent domain in accordance with ~~K.S.A. 26-501 to 26-516, inclusive~~ the eminent domain procedure act.

Sec. 10. On and after July 1, 2006, K.S.A. 26-201 is hereby amended to read as follows: 26-201. A city shall have the right to acquire by condemnation any interest in real property, including a fee simple title thereto. ~~Provided,~~ but cities shall not have the right to acquire a fee simple title to property condemned solely for street purposes. Whenever it shall be deemed necessary by the governing body of any city to appro-

appropriate private property for the use of the city for any purpose whatsoever, the governing body shall by resolution declare such necessity and authorize a survey and description of the land or interest to be condemned to be made by ~~some competent engineer~~ *a licensed land surveyor or a professional engineer who is competent to conduct a land survey* and filed with the city clerk. Such resolution shall be published once in the official city newspaper. Upon the filing of the survey and description of the land or interest to be condemned the governing body shall by ordinance authorize and provide for the acquisition of such land or interest, setting forth such condemnation, the interest to be taken and for what purpose the same is to be used. If in the opinion of the governing body any property is specially benefited by the proposed improvement such property shall be designated as the benefit district and the same shall be fixed by the ordinance authorizing and providing for the acquisition of the land or interest. The governing body, as soon as practicable after passage of the ordinance authorizing and providing for the appropriation of such land or interest and the fixing of the benefit district, if any is fixed, shall proceed to exercise the power of eminent domain in accordance with ~~K.S.A. 26-501 to 26-516 inclusive and amendments thereto~~ *the eminent domain procedure act*.

Sec. 11. On and after July 1, 2006, K.S.A. 72-8212a is hereby amended to read as follows: 72-8212a. (a) A unified school district may acquire by condemnation, for school purposes, any interest in real property, including fee simple title. If, within 10 years after entry of final judgment under K.S.A. 26-511, ~~and amendments thereto~~, the school district fails to construct substantial buildings or improvements that are used for school purposes on any real property acquired under this subsection, the school district shall notify the original owners or their heirs or assigns that they have an option to purchase the property from the school district for an amount equal to the compensation awarded for the property under the eminent domain procedures act. Such option shall expire if not exercised within a period of six months after the date of the expiration of the ~~ten-year~~ *10-year* period.

(b) A unified school district may acquire by condemnation, for any purpose whatsoever, any reversionary interest held by others in real property which the school district has previously acquired by condemnation, deed or contract if:

- (1) The district, or its predecessor districts, has constructed substantial improvements on the property; and
- (2) the school district, or its predecessor districts, has held an interest in the property for at least 20 years.

(c) When the board of education of a unified school district considers it necessary to condemn a property interest pursuant to this section, the board shall declare the necessity by resolution and shall authorize a ~~competent engineer~~ *licensed land surveyor or a professional engineer who is competent to conduct a land survey* to make a survey and description of the property and the interest to be condemned and to file them with the clerk of the board. The resolution shall be published once in a newspaper having general circulation in the school district. Upon the filing of the survey and description, the board of education shall provide by resolution for the acquisition of the property interest by condemnation. The resolution shall set forth a description of the property, the interest to be condemned and the purpose for which the property is and will be used. The board of education, as soon as practicable after the passage of the resolution, shall proceed to exercise the power of eminent domain in the manner provided by ~~article 5 of chapter 26 of the Kansas Statutes Annotated~~ *the eminent domain procedure act*.

Sec. 12. On and after July 1, 2007, 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 ~~it shall the plaintiff~~, within ~~thirty (30)~~ 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 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 10 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 10 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) ~~hereof~~ for any of the tracts described in the petition, within ~~thirty (30)~~ 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 ~~his~~ *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) ~~hereof~~, 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. 13. K.S.A. 2005 Supp. 26-508 is hereby amended to read as follows: 26-508. (a) If the plaintiff, or any defendant, is dissatisfied with the award of the appraisers, such party, within 30 days after the filing of the appraisers' report, may appeal from the award by filing a written notice of appeal with the clerk of the district court ~~and paying the docket fee of a new court action.~~ *The appeal shall be deemed perfected upon the filing of the notice of appeal.* In the event any parties shall perfect an appeal, copies of such notice of appeal shall be mailed to all parties affected by such appeal, within three days after the date of the perfection thereof. An appeal by the plaintiff or any defendant shall bring the issue of damages to all interests in the tract before the court for trial *de novo*. The appeal shall be docketed as a new civil action ~~and~~ *the docket fee of a new court action shall be collected and the appeal shall be tried as any other civil action.* The only issue to be determined therein shall be the compensation required by K.S.A. 26-513, and amendments thereto.

(b) *This section, as amended by this act, shall be construed and applied prospectively, as well as retroactively to July 1, 2003, and shall apply to all eminent domain proceedings pending on or commenced after July 1, 2003.*

New Sec. 14. The provisions of sections 1 through 6 and 12 are expressly declared to be nonseverable. If any provision of sections 1 through 6 and 12 is held to be invalid or unconstitutional, the entirety of such sections shall be null and void.

Sec. 15. K.S.A. 2005 Supp. 26-508 is hereby repealed.

Sec. 16. On July 1, 2006, K.S.A. 12-1306, 24-438, 24-467, 26-201 and 72-8212a are hereby repealed.

Sec. 17. On July 1, 2007, K.S.A. 26-501, 26-505 and 26-507 and K.S.A. 2005 Supp. 12-1773 and 19-101a, as amended by section 16 of 2006 House Bill No. 2590, are hereby repealed.

Sec. 18. This act shall take effect and be in force from and after its publication in the Kansas register.

I hereby certify that the above BILL originated in the SENATE, and passed that body

\_\_\_\_\_

SENATE adopted  
Conference Committee Report \_\_\_\_\_

\_\_\_\_\_  
*President of the Senate.*

\_\_\_\_\_  
*Secretary of the Senate.*

Passed the HOUSE  
as amended \_\_\_\_\_

HOUSE adopted  
Conference Committee Report \_\_\_\_\_

\_\_\_\_\_  
*Speaker of the House.*

\_\_\_\_\_  
*Chief Clerk of the House.*

APPROVED \_\_\_\_\_

\_\_\_\_\_  
*Governor.*