

Senate Concurrent Resolution No. 1608

By Senator Pyle

2-15

9 A PROPOSITION to amend the bill of rights of the constitution of the
10 state of Kansas by adding a new section thereto, concerning eminent
11 domain.

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13 *Be it resolved by the Legislature of the State of Kansas, two-thirds of the*
14 *members elected (or appointed) and qualified to the Senate and two-thirds*
15 *of the members elected (or appointed) and qualified to the House of Rep-*
16 *resentatives concurring therein:*

17 Section 1. The following proposition to amend the bill of rights of
18 the constitution of the state of Kansas shall be submitted to the qualified
19 electors of the state for their approval or rejection: The bill of rights of
20 the constitution of the state of Kansas is amended by adding a new section
21 thereto to read as follows:

22 “§ 21. **Eminent Domain.** (a) Private real property shall not
23 be taken for public use without just compensation. Private real
24 property may be taken only when necessary for the possession, oc-
25 cupation and enjoyment by the public at large, by public agencies,
26 or by privately owned common carriers. For the purposes of this
27 section, “privately owned common carriers” means commercial en-
28 terprises that hold themselves out to the public as offering to trans-
29 port freight, persons, information or other such services for a fee.

30 (b) Whenever an attempt is made to take private real property
31 for a use alleged to be public, the burden of establishing that the
32 contemplated use is public shall be by clear and convincing evi-
33 dence and shall remain on the condemner of the property.

34 (c) The power of eminent domain shall not be exercised to
35 transfer real property from one private owner to another. Private
36 real property taken for use by the public at large, by public agencies,
37 or by privately owned common carriers, shall not thereafter be
38 transferred to another private entity for a period of 10 years from
39 the time of transfer of legal title from the original owner. If the real
40 property is not used within 10 years, the real property, or a portion
41 thereof, may be sold back to the owner, from whom the private real
42 property was taken at the compensation determined at the time of
43 the taking, or prorated for any portion thereof. If the owner, from

1 whom the private real property was taken, does not purchase the
2 real property, then the taking entity may sell, or otherwise transfer,
3 such real property to a third party.”

4 Sec. 2. The following statement shall be printed on the ballot with
5 the amendment as a whole:

6 “*Explanatory statement.* There is currently no constitutional pro-
7 vision in the Kansas Constitution regarding the taking of private
8 real property through the power of eminent domain.”

9 “A vote for this proposition would prohibit the government use of
10 eminent domain for the purposes of taking private real property
11 and transferring that private real property to another private
12 entity.”

13 “A vote against this proposition would continue to allow the gov-
14 ernment use of eminent domain for the purposes of taking pri-
15 vate real property and transferring that private real property to
16 another private entity. If the taking entity wishes to sell the real
17 property prior to the end of 10 years, the real property must be
18 offered to the owner, from whom the private real property was
19 taken, at the compensation determined at the time of the taking.”

20 Sec. 3. This resolution, if approved by two-thirds of the members
21 elected (or appointed) and qualified to the Senate, and two-thirds of the
22 members elected (or appointed) and qualified to the House of Repre-
23 sentatives shall be entered on the journals, together with the yeas and
24 nays. The secretary of state shall cause this resolution to be published as
25 provided by law and shall cause the proposed amendment to be submitted
26 to the electors of the state at the primary election in August in the year
27 2008, unless a special election is called at a sooner date by concurrent
28 resolution of the legislature, in which case it shall be submitted to the
29 electors of the state at the special election.