

MINUTES OF THE HOUSE JUDICIARY COMMITTEE.

The meeting was called to order by Chairman Michael R. O'Neal at 3:30 p.m. on January 23, 2003 in Room 313-S of the Capitol.

All members were present except:

Representative Jim Ward - Excused

Committee staff present:

Jerry Ann Donaldson, Legislative Research Department  
Jill Wolters, Revisor of Statutes  
Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:

Representative Ray Merrick  
Robert Krehbiel, Kansas Independent Oil & Gas Association  
Representative Jeff Goering  
Kyle Smith, Kansas Bureau of Investigations  
Randy Hearrell, Kansas Judicial Council  
Jerry Goodell, Kansas Judicial Council, Chairman Eminent Domain Act Advisory Committee  
Phil Mellor, Kansas Judicial Council, Eminent Domain Act Advisory Committee  
John Hamilton, Kansas Judicial Council, Eminent Domain Act Advisory Committee  
Sandy Jacquot, League of Kansas Municipalities  
Derenda Mitchell, Kansas Livestock Association  
Leonard Hall, City of Olathe

Representative Ray Merrick appeared before the committee with a bill request which provides a process for homeowners to address concerns that they might have with their newly built home. It would allow all parties involved a set amount of time to resolve those problems before an action is brought. Representative Patterson made the motion to have the request introduced as a committee bill. Representative Loyd seconded the motion. The motion carried.

Robert Krehbiel, Kansas Independent Oil & Gas Association, requested a committee bill which would restore the language in K.S.A. 84-9-319, perfecting security interests in oil and gas production. Representative Patterson made the motion to have the request introduced as a committee bill. Representative Pauls seconded the motion. The motion carried.

Representative Jeff Goering requested a bill be introduced which would revise K.S.A. 60-2610, the worthless check statute. Representative Goering made the motion to have the request introduced as a committee bill. Representative Loyd seconded the motion. The motion carried.

Kyle Smith, Kansas Bureau of Investigations, requested a bill dealing with licensure of private detectives renewing their licenses two years from when they received their original license. Representative Owens made the motion to have the request introduced as a committee bill. Representative Crow seconded the motion. The motion carried.

Chairman O'Neal turned the committee's attention to hearing bills. He opened the hearing on **HB 2031 - Repealing the statute concerning wills containing formula marital clauses.**

Randy Hearrell, Kansas Judicial Council, addressed the committee as a proponent of the bill. He explained that the statute was enacted to address one specific case where an attorney made an inadvertent error that caused him to lose a special use value election pursuant to Section 2032A of the IRS code and could have faced charges of malpractice. The statute is no longer useful and the Judicial Council proposed the repeal of it.

The hearing on **HB 2031** was closed.

**Hearings on HB 2032 - Proposed amendments to the Kansas Eminent Domain Act, were opened.**

CONTINUATION SHEET

MINUTES OF THE HOUSE JUDICIARY COMMITTEE at 3:30 p.m. on January 23, 2003 in Room 313-S of the Capitol.

Jerry Goodell, Kansas Judicial Council, Chairman Eminent Domain Act Advisory Committee, explained several sections of the bill. (Attachment 1)

- Section 1 - requires that interested parties must appear in person or by an attorney and that any party can be called as a witness.
- Section 2 - requires each appeal to be docketed as a new action.
- Section 3 - mandates that any condemning authority must pay relocation expenses.

Phil Mellor, Kansas Judicial Council, Eminent Domain Act Advisory Committee, went into more detail on Section 3 of the bill. If the state or a city condemns ones house or business, and the owner receives fair market value, they still have to move and it causes an added expense on the owners that they wouldn't necessarily have. Therefore, the agency condemning the property should be responsible to pay for the relocation expenses. (Attachment 2)

John Hamilton, Kansas Judicial Council, Eminent Domain Act Advisory Committee, informed the committee that the building across the street was condemned by a blend of city & state which did not pay for relocation expenses and therefore, several business were forced to close as a result of not being able to afford to relocate.

Sandy Jacquot, League of Kansas Municipalities, appeared in opposition to the bill because it has a huge unfunded mandate on cities to pay the relocation expenses and it mandates compliance with federal law regardless whether there are federal funds available or not. Paying relocation expenses should be an option, not a mandate. (Attachment 3)

Derenda Mitchell, Kansas Livestock Association, opposed section two, lines 15 & 16 in which the landowner would have to pay a filing fee to implement protections, suggested amending lines 22-26 to state that the compensation and reasonableness of the taking may be determined in the trial de novo and encouraged the committee to add a new section that provides for attorneys fees and costs to the landowner when the condemning authority acts unreasonably or when the appraisal is determined to be too low. (Attachment 4)

Leonard Hall, City of Olathe, appeared in opposition to the bill. He stated that trying to comply with federal regulations is a very time consuming process and encouraged the committee to rethink this portion of the bill. (Attachment 5)

A spokesperson from Kansas Farm Bureau did not appear before the committee but requested their written testimony, in opposition of the bill, be included in the committee minutes. (Attachment 6)

Hearings on **HB 2032** were closed.

The committee meeting adjourned at 4:45 p.m. The next meeting was scheduled for January 27, 2003 at 3:30 p.m. in room 313-S.



# KANSAS JUDICIAL COUNCIL

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ADMINISTRATIVE ASSISTANT

## MEMORANDUM

**TO:** House Judiciary Committee  
**FROM:** Kansas Judicial Council - Gerald L. Goodell  
**DATE:** January 23, 2003  
**RE:** HB 2032 - Relating to Kansas Eminent Domain Act and Relocation Expenses

House Bill No. 2032 contains proposed amendments to K.S.A. 26-506 and 26-508 of the Kansas Eminent Domain Act, a proposed amendment to K.S.A. 58-3502 relating to relocation expenses and the proposed repeal of K.S.A. 58-3505.

The bill is recommended by the Judicial Council and was drafted by the Judicial Council Eminent Domain Advisory Committee. The members of that Committee are:

Gerald L. Goodell, Topeka, Chair,  
Greg A. Bengtson, Salina,  
Galen E. Biery, Berryton,  
John Hamilton, Topeka,  
Teresa J. James, Wichita,  
George A. Lowe, Olathe,  
Phillip Mellor, Wichita,  
David Rapp, Wichita,  
Michael B. Rees, Topeka,  
Bradley A. Stout, Wichita, and  
John Strahan, Topeka.

These members represent a wealth of experience in the eminent domain area representing both condemnees and condemnors. While they often disagree on matters relating to the Kansas

Eminent Domain Act, they are in agreement on this bill.

The following are comments on the bill:

### **Section One**

The amendments to this section require that the interested parties named in K.S.A. 26-502 appear in person or by attorney. The amendments also clarify any party may call witnesses.

The change requiring the interested parties named in K.S.A. 26-502 appear in person or by attorney was made by the Committee to ensure that if the landowner chooses to be represented that the landowner has a representative who is required to be informed of all rules applicable to the proceedings. Often non-lawyer representatives are not aware of all such rules and may negatively impact the rights of the landowner. Also, situations arise in which non-lawyer representatives turn to the lawyer from the condemning authority or the lawyer for other interested parties for advice. This places those lawyers in a difficult and inappropriate position. Of course, the landowner may represent himself or herself.

### **Section Two**

It is the opinion of the Committee that since an appeal from an appraisers award is filed as a new civil action, the appellant should be required to pay a docket fee. Under the current statute, in some districts all appeals are kept in the same case file and share the same caption and case number. This amendment requires each appeal to have its own case number and file, rather than being a part of a number of appeals which share the same case number and caption and which proceed at various speeds and conclude at various times. This amendment allows the court to maintain orderly procedures and clearly identify issues for trial.

The change in the last sentence of the section was made because the Committee was concerned that the phrase "and for other damages allowable by law" was inconsistent with subsection (a) of K.S.A. 26-513 (a copy which is attached at page 4 of this memo) and could be interpreted to expand the scope of the trial to consideration of issues not relating to compensation.

### **Section Three**

The proposed amendment is a major change which will require all condemning authorities to pay relocation expenses. Currently only the state and its agencies or political subdivisions are required to pay relocation expenses when federal financial assistance is involved, although K.A.R. 36-16-1 provides the Department of Transportation shall pay relocation expenses in all instances.

The payment of relocation benefits is necessary in order to ensure a landowner or other occupant is not made to suffer the significant expenses often associated with moving from one location to another. The proposed change is intended to ensure that all persons subject to relocation

as a result of condemnation are treated equally and are not required to bear the cost to move to a new location.

#### Section Four

~~58-3505. Displacement of persons where federal funds not involved; powers of state and local governments. When federal funds are not available or used for payment of financial assistance to persons displaced by acquisition of property, the state of Kansas, any agency or political subdivision thereof may, notwithstanding any other statute, resolution, ordinance or rule or regulation, provide fair and reasonable relocation payments and assistance to such persons as are required by, but shall not exceed the payments and assistance provided in subsections (1) and (2) of K.S.A. 58-3503 and may adopt rules and regulations to carry out the provisions of this section.~~

#### Comment

This section should be repealed if the amendment of K.S.A. 58-3502 requiring all condemning authorities to pay relocation expenses is adopted.



1 **26-513. Same; compensation required for taking and damage; determination.** (a) Necessity.  
2 Private property shall not be taken or damaged for public use without just compensation.  
3 (b) Taking entire tract. If the entire tract of land or interest in such land is taken, the measure of  
4 compensation is the fair market value of the property or interest at the time of the taking.  
5 (c) Partial taking. If only a part of a tract of land or interest is taken, the compensation and measure  
6 of damages is the difference between the fair market value of the entire property or interest  
7 immediately before the taking, and the value of that portion of the tract or interest remaining  
8 immediately after the taking.  
9 (d) Factors to be considered. In ascertaining the amount of compensation and damages, the following  
10 nonexclusive list of factors shall be considered if such factors are shown to exist. Such factors are  
11 not to be considered as separate items of damages, but are to be considered only as they affect the  
12 total compensation and damage under the provisions of subsections (b) and (c) of this section. Such  
13 factors are:  
14 (1) The most advantageous use to which the property is reasonably adaptable.  
15 (2) Access to the property remaining.  
16 (3) Appearance of the property remaining, if appearance is an element of value in connection with  
17 any use for which the property is reasonably adaptable.  
18 (4) Productivity, convenience, use to be made of the property taken, or use of the property remaining.  
19 (5) View, ventilation and light, to the extent that they are beneficial attributes to the use of which the  
20 remaining property is devoted or to which it is reasonably adaptable.  
21 (6) Severance or division of a tract, whether the severance is initial or is in aggravation of a previous  
22 severance; changes of grade and loss or impairment of access by means of underpass or overpass  
23 incidental to changing the character or design of an existing improvement being considered as in  
24 aggravation of a previous severance, if in connection with the taking of additional land and needed  
25 to make the change in the improvement.  
26 (7) Loss of trees and shrubbery to the extent that they affect the value of the land taken, and to the  
27 extent that their loss impairs the value of the land remaining.  
28 (8) Cost of new fences or loss of fences and the cost of replacing them with fences of like quality,  
29 to the extent that such loss affects the value of the property remaining.  
30 (9) Destruction of a legal nonconforming use.  
31 (10) Damage to property abutting on a right-of-way due to change of grade where accompanied by  
32 a taking of land.  
33 (11) Proximity of new improvement to improvements remaining on condemnee's land.  
34 (12) Loss of or damage to growing crops.  
35 (13) That the property could be or had been adapted to a use which was profitably carried on.  
36 (14) Cost of new drains or loss of drains and the cost of replacing them with drains of like quality,  
37 to the extent that such loss affects the value of the property remaining.  
38 (15) Cost of new private roads or passageways or loss of private roads or passageways and the cost  
39 of replacing them with private roads or passageways of like quality, to the extent that such loss  
40 affects the value of the property remaining.  
41 (e) Fair market value. "Fair market value" means the amount in terms of money that a well informed  
42 buyer is justified in paying and a well informed seller is justified in accepting for property in an open  
43 and competitive market, assuming that the parties are acting without undue compulsion. The fair  
44 market value shall be determined by use of the comparable sales, cost or capitalization of income  
45 appraisal methods or any combination of such methods.

FLEESON, GOOING, COULSON & KITCH, L.L.C.

LAWYERS

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WILLARD B. THOMPSON  
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J. ERIC ENGSTROM  
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RON CAMPBELL  
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Sender's E-mail Address:  
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January 22, 2003

Judiciary Committee of the Kansas  
House of Representatives

Chairman Michael O'Neal and Members of the Committee:

I am most interested in Section 3 of House Bill No. 2032, which extends relocation benefits to persons displaced by condemnation cases. I am not certain about the wisdom or necessity of extending the benefits in the case of building code enforcements, rehabilitation or demolition programs, for in such cases, the public does not acquire the property as they do in Eminent Domain proceedings.

The federal act to which Section 3 of the Bill refers is the Federal Uniform Relocation Assistance and Real Property Acquisitions Policy Act of 1970. It is identified at K.S.A. 58-3501. Its purpose is to relieve individual landowners or occupants of property condemned of the actual and reasonable cost of relocating their residence or business.

The underlying theory of Eminent Domain proceedings is that the condemnor pays market value for the property taken. Now on its face that seems fair; it has a solid ring to it. The landowner is compensated for the fair market value of his property and the public gets what it needs, but when Mr. & Mrs. Doe have a house full of furniture they must have moved to a replacement residence and the moving cost is \$2,000, they have received the market value of their property but incurred a loss of \$2,000. American Automotive Company incurs expenses of \$200,000.00 in moving its inventory of auto parts and its

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machinery only one quarter of a mile to its new location. It was paid for the land and building that was taken, but it has lost \$200,000.00 in relocation expense. Ebersole Lapidary Supply incurs an expense exceeding \$100,000.00 in moving more than seven thousand (7000) separately catalogued items to its new location one and a half miles away. It was paid a reasonable price for the property that was taken, but it lost \$100,000.00 to the Eminent Domain machine.

Should not the public bear these expenses? The United States thinks so and it is the public policy of the United States whenever federal funds are used as expressed in the relocation act. Kansas thinks so, at least in part, for relocation benefits are required whenever KDOT funds are used.

The City of Wichita which is peculiarly adept at selectively abusing some of its citizens has become an habitual Eminent Domain abuser. The improvement of Kellogg from east of the city limits to west of the city limits is thought of by the citizenry as "The Kellogg Project." We are aware that federal and state funds are used in The Kellogg Project. The City, however, allocates those funds to portions of the highway improvement and by dividing the project into several projects, claims that it does not use any federal or state funds in some of those sub-projects and denies relocation benefits to those selected victims. In the examples given, had American Automotive or Ebersole Lapidary Supply been located three or four miles further east than they were, they would have received compensation for the relocation expenses that they had to bear individually.

I anticipate that there will be objections made by cities and counties that adoption of Section 3 of the Bill would increase their costs substantially. The more the cost would be increased, the more unfair it seems that the individual landowners should bear that cost rather than the public.

As a matter of special interest, we call attention to the fact that the representative of KDOT, who has participated in drafting the proposed legislation through the Eminent Domain Sub-Committee of the Judicial Council, is convinced that the ability to pay relocation costs permits KDOT to save money in the long run because it is in position to alleviate the



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hardships often imposed by the necessity of relocation of persons or businesses.

It also is important to point out that many exercises of Eminent Domain do not require the relocation of persons or property.

I earnestly commend the Bill to your favorable attention and especially with regard to Section 3, I ask that you review my remarks and this communication.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "P. Mellor", written over a horizontal line.

Phillip Mellor

PSM:ljv



League of Kansas Municipalities

300 SW 1<sup>st</sup> Avenue  
Topeka, Kansas 66603-3912  
Phone: (785) 354-9565  
Fax: (785) 354-4186

TO: House Judiciary Committee  
FROM: Sandra Jacquot, Director of Law/Legal Counsel  
DATE: January 22, 2003  
RE: Opposition to HB 2032

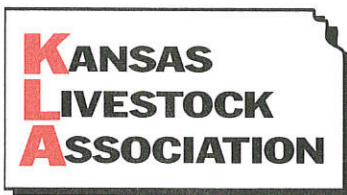
Thank you for the opportunity to appear today on behalf of the League of Kansas Municipalities in opposition to HB 2032. This bill, if enacted would amend the statutes relating to eminent domain, including the statutes enacted to authorize compliance with the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. This act, in K.S.A. 58-3502, currently allows a state agency or political subdivision to make relocation payments and other types of assistance available at its discretion whenever acquisition of real property by eminent domain displaces any person. A key provision of the statute specifies that these options are available when the project requiring the eminent domain action is fully or partially funded by federal money.

The amendment to K.S.A. 58-3502 would eliminate the federal funding requirement and mandate that relocation assistance and other services be made available anytime an eminent domain action displaces any person. It would also be required anytime a building code enforcement activity, rehabilitation or demolition program results in the displacement of any person. The application of the specific remedies of relocation assistance and other services under the statute would have to comply with the federal act, even though federal funding would no longer have to be a component of the program.

The League opposes this bill for two reasons. First, it has the potential to be a huge unfunded mandate on cities. Cities are facing the potential loss of \$150 million in state demand transfers over the next 18 months. Just as the State is experiencing an unprecedented budget shortfall, cities are left trying to provide basic services in the same budget climate. Therefore, anything that increases cities' costs will be a major stumbling block to any project requiring the use of cities' eminent domain authority.

Second, this bill mandates compliance with federal law regardless of whether or not federal funds are being used in the project that results in displacement of a person from their property. This would add another layer of bureaucracy onto an already time-consuming process. It simply makes the process more unwieldy without any real policy reason for the requirement.

For all of the above-stated reasons, the League of Kansas Municipalities requests that this committee report HB 2032 unfavorably.



*Since 1894*

### Testimony

To: House Judiciary Committee  
From: Derenda Mitchell, KLA Research and Legal Affairs  
Subject: HB 2032  
Date: January 23, 2003

Mr. Chairman and honorable committee members, legislative staff, and interested attendees, my name is Derenda J. Mitchell. I am Assistant Counsel for the Kansas Livestock Association. The Kansas Livestock Association is an approximately 6500-member organization of livestock producers.

As landowners, our members are concerned about governmental intrusions, especially governmental takings of the land upon which we depend to raise our livestock. House Bill 2032, in part, asks that the landowner who is being stripped of his land also pay for the constitutionally required process to compensate him for the infringement of his rights. Under House Bill 2032, landowners would be asked to pay the filing fee, currently \$105, to petition for a trial following the appraisers' decision in eminent domain proceedings. This trial is the first truly judicial step in the eminent domain process. Judicial review is constitutionally required. Charging a fee for a constitutional requirement that should be the burden of government is particularly offensive when viewed in conjunction with K.S.A. 60-2005. K.S.A. 60-2005 waives the filing fees when the state, a county, or a city files with the court. The landowner will be the one having to pay the fees in actions brought by government. Inequity results. As a lawyer, I question whether this fee would survive an equal protection challenge and whether it fulfills the government's obligation to compensate a landowner for the taking of private property.

From a practical perspective, KLA appreciates there are costs associated with democracy. In a democratic society, it should be the public's burden as a whole to afford these rights, not the individual whose constitutional rights are being threatened. Instead of restricting constitutional protections and charging for them, we respectfully suggest the committee should amend this bill to assure that an individual is not unfairly deprived of his property without due process of law or without just compensation. Under the current system of governmental takings, the landowner is able to challenge only the amount of compensation he is to receive. This bill should be amended to allow the landowner to challenge the reasonableness of any taking. By authorizing challenges to the reasonableness of takings, greater efficiency in takings cases could be achieved. The

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current system perpetuates the 16<sup>th</sup> century notion that the king can do no wrong. We know that government is not infallible. Please allow landowners the opportunity to suggest a better way and to challenge the reasonableness of governmental takings in eminent domain proceedings.

A third suggestion is to require complete compensation to the landowner who successfully challenges the condemning authority. If after a trial on the merits, it is determined that the party exercising eminent domain powers did not offer the proper value for the land being taken or if the taking of any portion of that land was unreasonable, the losing party should pay all costs and attorneys fees associated with the landowner's successful challenge. Assuring compensation of attorneys' fees and costs would promote greater efficiency in eminent domain proceedings. Government would be encouraged to assess its needs more carefully and be less inclined to take away private property.

To recap, please amend this bill in three ways. One, please strike the italicized language in Section two, lines 15 and 16. The landowner should not have to pay a filing fee to implement constitutional protections. Two, please amend lines 22 through 26 to state that the compensation and reasonableness of the taking may be determined in the trial de novo. Three, please add a new section that provides for attorneys' fees and costs to the landowner when the condemning authority acts unreasonably or when the appraisal is determined to be too low for the value of the land being taken.

Thank you for your consideration of these matters.



MEMORANDUM

Written Testimony in Opposition to HB 2032

TO: Members of the House Judiciary Committee  
FROM: Leonard Hall, Assistant City Attorney for City of Olathe, Kansas  
DATE: January 23, 2003

Regarding House Bill No. 2032, the City of Olathe strongly opposes this bill. Under current Kansas and Federal law, relocation assistance and payments, as well as providing appraisals/estimate of compensation by a certified right-of-way agent and appraiser, are required only when federal funds are involved. House Bill 2032 will expand these federal requirements to all land acquisition projects with or without federal funds. House Bill 2032 will require relocation assistance and payments in ALL city land acquisition projects as well as in ALL building code enforcement activities, ALL building rehabilitation projects and ALL building demolition (dangerous structures) projects where there are no federal funds.

House Bill No. 2032 goes beyond requiring simple relocation assistance and payments for relocation of owners and tenants. House Bill No. 2032 poses major unknown consequences to many cities, including small cities across Kansas, when dealing with land acquisition in many different kinds of projects.

House Bill No. 2032 will require compliance with federal regulations that are very complex, costly, and time-consuming and constitutes an unfunded mandate upon cities to hire additional staff, right-of-way agents and appraisers to comply with these new requirements.

In a brief explanation of each section:

Section 1. (Amending K.S.A. 26-506) this does not add anything to what the parties are currently doing in eminent domain proceedings. "(A)ppearing in person or by an attorney" does not add anything as the Court-Appointed Appraisers are already hearing oral or written testimony from the plaintiff and each interested party at the appraisers' hearing.

Section 2. The proposed amendment does not add anything as the District Court relies upon the factors set out in K.S.A. 26-513. The current section states the only issue to be determined therein shall be that of just compensation to be paid for the land or right therein taken at the time of the taking and for any other damages allowable by law. The District Court refers to K.S.A. 26-513 for those damages allowable by law.

Section 3. It states: any condemning authority which program or project will result in the displacement of any person by acquisition of real property, or by the direct result of building code enforcement activities, rehabilitation or demolition programs, .... In reading the section itself and without clarification, this section imposes a tremendous broad burden on many cities with unknown consequences.

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Section 3 will apply to land acquisition in all construction projects, including street, waterlines, sanitary sewer lines, parkland, and other city related facilities. Without clarification and reading Section 3 by itself, Section 3 can apply to all building code enforcement activities; can apply to all rehabilitation projects where the owner or tenant has to relocate; and can apply to all demolition cases that may be applicable under the dangerous structure act.

Under this proposed section, cities would be required to provide relocation payments and assistance to these tenants adding \$10,000 to \$20,000 or more per unit to the cost of land acquisition, rehabilitation, and demolition. This requirement could kill a substantial number of construction, rehabilitation, and demolition projects.

Under Section 3(6), each city or county would be required to retain certified right-of-way agent or personnel to handle the relocation payments and assistance. It is difficult for any untrained personnel to comply with the requirements set forth in section 202, 203, 204, 205, 301, 302, or any other sections of the Federal Act. The federal act on relocation and land acquisition is very complex, costly, and time-consuming and would require hiring a certified third party to handle the relocation and appraisal work. At one seminar, I heard several city attorneys state that numerous errors and mistakes were committed by city staff attempting to comply with the federal act.

The City of Olathe has a right-of-way agent and appraiser under contract and employs a paralegal to handle land acquisition including compliance with the federal requirements. The cost for the right-of-way agent and appraiser under contract for the City of Olathe in 2002 was approximately \$110,000. Many small cities and counties do not have the staff or resources to be aware of or handle these requirements. Will the State allocate a couple of million dollars to assist cities and counties in complying with federal regulations in all of their land acquisition projects?

Under Section 3 (3), it is very important to note that this section is known as requiring the City to do an appraisal or estimate of compensation for each tract and to make an offer based upon such appraisal as well as keeping detailed negotiation notes and other requirements. It would require the City to do an appraisal or estimate of compensation and to make an offer to the owner based upon the appraisal or estimate on all land acquisition matters, including easements, street right-of-way, temporary construction easement for all construction projects. Even though Section 3 relates to relocation assistance and payment, Section 3 (3) can be construed to require cities to do appraisals and make offers based upon such appraisal.

Section 3 (3) states: In acquiring the real property be guided to the greatest extent practicable under state law by the land acquisition policies in section 301 and the provisions of section 302 of the federal act. Sections 301 and 302 of the federal act impose requirements that the city will have to use a certified right-of-way agent and/or appraiser to do an appraisal for each and every tract that the city or county has to acquire unless the taking involves a low amount. Even with the low amount, an estimate of compensation with 2 comparable sales must be provided by the Right-of-Way agent. Section 301 and 302 require that all offers must be made based upon the appraisal or estimate of compensation. Furthermore, detailed notes of negotiation must be kept. Sections 301 and 302 contain time-consuming and costly requirements.

In summary, it is not wise to require cities and counties to comply with federal regulations in land acquisition projects where no federal funds are provided. It is a very costly and time-consuming mandate.



## **Kansas Farm Bureau**

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### **PUBLIC POLICY STATEMENT**

## **HOUSE COMMITTEE ON JUDICIARY**

**RE: HB 2032 – and act relating to eminent domain.**

**March 23, 2003  
Topeka, Kansas**

**Presented by:  
Leslie Kaufman, State Director  
Governmental Relations**

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Chairman O'Neal and members of the House Judiciary Committee, thank you for the opportunity to provide comments regarding HB 2032, dealing with eminent domain. Kansas Farm Bureau is a grassroots agricultural organization representing 105 county farm bureaus with more than 43,000 farmer and rancher members actively engaged in production agriculture. Our member-enacted policy is developed over a 12-month process, culminating with the ratification of policy language at our annual meeting. The resolutions adopted this past November at the 84<sup>th</sup> Annual Meeting of Kansas Farm Bureau guide the policy implementation efforts our organization is pursuing during 2003.

Kansas Farm Bureau respectfully offers some comments for your consideration as you deliberate HB 2032.

It appears to us that this bill does not expand the eminent domain statute, but rather establishes a mechanism to access court fees. For your information, we cite a portion of our Kansas Farm Bureau policy addressing eminent domain in general:

***Eminent domain procedures should be used only for legitimate government purposes and should include development of an agricultural impact statement, complete with public hearing, appeal, and a determination of compensation for disruption of normal farming practices. Equitable payment must be made for any private property in any "taking" or "partial taking" by eminent domain. GOV-12***

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Additionally, we would note for your American Farm Bureau Federation has new policy language opposing the ability of non-elected boards, agencies and commissions, public or private, to utilize the eminent domain process.

Our apprehension with the bill at hand stems from a concern that the imposition of additional fees could make it more difficult for some individuals to access the court system. ***Property owners should have the right to judicial review of the need and location of the proposed taking....We support changes in legislation regarding eminent domain cases that would strengthen the rights of landowners and would allow them greater latitude to present evidence in court proceedings (AFBF 12).***

It is the clear intent of the Kansas Constitution, Article 12, Section 4, and the eminent domain provisions to provide just compensation to a landowner. However, if a landowner were to appeal the award, and be successful (a judge or jury renders a verdict in an amount greater than the appraisers award), he or she would still incur the additional fee for court cost.

In these tight financial times, we note that the cost of litigation is a factor in determining an individual's true ability to access appropriate judicial review. As such, we offer this for your consideration and appreciate the opportunity to comment.

Should you have questions, please feel free to contact us at your convenience.

Leslie Kaufman  
Kansas Farm Bureau  
234-4535

*Kansas Farm Bureau represents grassroots agriculture. Established in 1919, this non-profit advocacy organization supports farm families who earn their living in a changing industry.*