

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairman John Vratil at 9:30 a.m. on March 6, 2003, in Room 123-S of the Capitol.

All members were present.

Committee staff present: Mike Heim, Kansas Legislative Research Department
Lisa Montgomery, Office of the Revisor of Statutes
Dee Woodson, Committee Secretary

Conferees appearing before the committee:

Representative Kathy Decker (written only)
Stuart Little, Kansas Community Corrections Association (written only)
Randy Hearrell, Kansas Judicial Council
Gerald L. Goodell, Kansas Judicial Council
Phil Mellor, Wichita attorney
John Hamilton, Topeka Attorney
Vicky Johnson, Office of the Chief Council for KDOT
Sandy Jacquot, Kansas League of municipalities
Leonard Hall, City of Olathe
Rich Eckret, Shawnee County Counselor
Judy Moler, Kansas Association of Counties (written only)
Erik Sartorius, City of Overland Park (written only)

Others attending: see attached list

HB 2031 - Repealing the statute concerning wills containing formula martial clauses

Chairman Vratil opened the hearing on **HB 2031**. Randy Hearrell testified in support of this proposed legislation to repeal K.S.A. 59-624, and explained the reasons for repealing the outdated statute. (Attachment 1)

Having no other conferees to speak on the proposed bill, the Chair closed the hearing on **HB 2031**.

Senator Goodwin moved to recommend **HB 2031** favorably, seconded by Senator Donovan, and the motion carried.

HB 2032 - Eminent domain; interested parties; appeals; relocation assistance

The Chair opened the hearing on **HB 2032**. Gerald Goodell testified in support of **HB 2032** on behalf of the Kansas Judicial Council. He said that the bill was drafted by the Judicial Council Eminent Domain Advisory Committee, and explained the suggested amendments to the bill as detailed in his written testimony. He stated that the main change to the bill was in drafting a new section 3 relating to relocation expenses which the House Judiciary Committee adopted and the Council supports. (Attachment 2)

Conferee Mellor appeared before the Committee in support of **HB 2032**. He stated that relocation costs are limited to the actual and reasonable costs incurred based upon competitive bids. He gave some examples of the expense of businesses having to relocate. He said that it is unreasonable to expect a person whose property is taken and who is forced to relocate because of condemnation to personally bear the cost when it should be spread to the public at large. (Attachment 3)

Committee questions and discussion followed. Chairman Vratil stated that this bill was very difficult to read. He provided additional information to the Committee in order to understand what the current law is in regard to an administrative appeal by the land owner. He explained that the House of Representatives changed this only with respect to procedure and provided that instead of going through an administrative appeal, the land owner could appeal the relocation award to the District Court and get a jury decision as to the amount of the relocation expenses.

The Chairman asked the next conferee, John Hamilton, to clarify how the House change the bill in regard to the relocation awards. He said that the bill as amended does not bring the condemning authority under

CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE on March 6, 2003 in Room 123-S of the Capitol.

to the relocation awards. He said that the bill as amended does not bring the condemning authority under the Act, but does establish the fact that payments and assistance for displaced persons equal to that provided under the Federal Uniform Act will be deemed reasonable. He stated that he preferred the bill as originally drafted and submitted. (Attachment 4)

Vicky Johnson, Acting Chief Council for KDOT, appeared before the Committee in opposition to **HB 2032** as amended by the House Committee on Judiciary, concerning eminent domain and relocation assistance. She explained several issues relating to this bill in which KDOT had concerns on and wanted to bring them to the attention of the Committee. Ms. Johnson stated that KDOT preferred the bill as it was originally written. (Attachment 5)

Sandy Jacquot, Kansas League of Municipalities (KLM), testified in opposition to this bill and the requirement of mandatory payments to displaced persons. She explained the problems that LKM saw with the way the bill was changed, and detailed their concerns in her written testimony. (Attachment 6)

Leonard Hall, Assistant City Attorney for the City of Olathe, spoke in opposition to the bill as amended by the House Judiciary Committee. He said the bill also refers to sections in the federal laws that are not applicable to relocation assistance and payment. (Attachment 7)

Judy Moler, Kansas Association of Counties, submitted written testimony in opposition to **HB 2032**. (Attachment 8)

Erik Sartorius, City of Overland Park, submitted written testimony in opposition to **HB 2032**. (Attachment 9)

After brief Committee discussion and questions, Chairman Vratil closed the hearing on **HB 2032**.

HB 2017 - Joint committee on corrections and juvenile justice oversight, extending sunset two years
Chairman Vratil opened the hearing on **HB 2017**. Senator Goodwin explained the context of the bill and the reasons behind wanting to extend the Oversight Committee for two years.

Representative Kathy Decker submitted written testimony in support of **HB 2017**. (Attachment 10)

Stuart Little, on behalf of the Kansas Community corrections Association, submitted written testimony in support of **HB 2017**. (Attachment 11)

The Chair closed the hearing on **HB 2017**.

The meeting adjourned at 10:30 a.m. The next scheduled meeting is March 7, 2003.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Thursday, March 6, 2003

NAME	REPRESENTING
Susan Mahoney	for Stuart Little
Michael Z. Whit	KCDAA
Lynnaia South	WA
Dave Hattmans	KEC
Lena Horkman	Germany GHS
Wes Schmidt-Tieszen	Goessel High School
Elizabeth Geimer	OSA
Scott Kenefake	KAA
Don Seifert	City of Olathe
Bob Mellor	
Bob Lewis	Sen. Schmidt
Ron Secker	Heinlaw Farm
Whitney Gannon	KS Bar Assn.
Dary Smith	KLPG
Crystal Wilson	Great Britain GHS
Theresia Hoelzel	Germany GHS
Matt Froese	Goessel High
Dustin Spoonmore	Goessel High
Erik Santorius	City of Overland Park

SENATE JUDICIARY COMMITTEE GUEST LIST

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DATE: Thursday, March 6, 2003

NAME	REPRESENTING
Ron Applebitt	WaterOne
J. L. Hand	Judicial course
Phil Morse	"
D. M. Hearrell	"



KANSAS JUDICIAL COUNCIL

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MARIAN L. CLINKENBEARD
ADMINISTRATIVE ASSISTANT

MEMORANDUM

TO: Senate Judiciary Committee
FROM: Kansas Judicial Council - Randy M. Hearrell
DATE: March 6, 2003
RE: HB 2031 - Repeal of K.S.A. 59-624

K.S.A. 59-624 currently reads as follows and the Judicial Council recommends it be repealed:

59-624. Construction of wills containing formula marital clauses. Wills executed on October 2, 1979, of decedents who died residents of Ford county, Kansas, on November 25, 1987, which contain a formula expressly providing that the testator's spouse is to receive the maximum amount of property qualifying for the marital deduction allowable by federal law, shall be construed as referring to the unlimited marital deduction allowable by the federal law, as amended by subsection (a) of section 403 of the economic recovery tax act of 1981.

History: L. 1989, ch. 172, § 1; May 18.

My understanding is that an inadvertent error made by a reputable lawyer caused him to face loss of the special use value election pursuant to section 2032A of the IRS code. In addition, he could have faced charges of malpractice. He sought and obtained passage of 1989 SB 403. We don't know if the statute solved his problem, however, we do know it is no longer useful and should be repealed.

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MEMORANDUM

TO: Senate Judiciary Committee
FROM: Kansas Judicial Council - Gerald L. Goodell
DATE: March 6, 2003
RE: HB 2032 - Kansas Eminent Domain Act and Relocation Expenses

The bill is recommended by the Judicial Council and was drafted by the Judicial Council Eminent Domain Advisory Committee. The members of the 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 have a great deal of experience representing both condemnees and condemnors. While they often disagree on matters relating to the eminent domain, they are in agreement in their support of 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

In most judicial districts an appeal from an appraisers award is filed as a new civil action and a docket fee is paid. The docket fee is returned if the appeal is successful. In a few districts all appeals share the same caption and case number are all kept in the same case file. The amendment on page 2, at lines 16 and 17, requires each appeal to have its own case number and file.

The change the Judicial Council proposed in the last sentence of the section was proposed because the Council was concerned that the phrase "and for other damages allowable by law" was inconsistent with subsection (a) of K.S.A. 26-513. After discussion, the House Judiciary Committee struck the sentence entirely. The Council agrees with that action.

Section Three

The proposed amendment contained in new section three is a policy 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 expense 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 provide that all persons subject to relocation as a result of condemnation are treated equally.

The Council had originally proposed accomplishing the payment of relocation expenses by amending K.S.A. 58-3502 and repealing K.S.A. 58-3505. After discussion in House Judiciary

Committee it was agreed that the better course of action is to instead draft a new section 3 relating to relocation expenses. The House Judiciary Committee adopted such a draft and the Council supports it.

Subsection (b) of new section 3 provides a "safe harbor" for the determination of what are "fair and reasonable relocation payments" by providing that payments under the federal Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970 shall be deemed fair and reasonable payments.

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

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Sender's E-mail Address:
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March 5, 2003

Honorable John Vratil, Chairman and
Members of the Senate Judiciary Committee

I appear in support of House Bill No. 2032 which amends the
Eminent Domain Procedure Act.

Section 1 of the Bill is intended to assure that persons
representing landowners in condemnation cases are qualified to
do so. We encounter cases from time to time in which
landowners are represented by real estate brokers or others who
are good at real estate, but who are unable to give their
clients direction with respect to the law in the cases, often
to the detriment of their client.

Section 2 is primarily a housekeeping provision. Where
separate files for appeals cases are not created, the files
become bulky and unmanageable containing all of the pleadings
including the discovery and depositions of several different
appeals. Section 2 will codify the practice already existing
in many districts to create a new case for each appeal.

Section 3 is not entirely new. Heretofore a condemnor in
a project using federal funds or funds provided by the Kansas
Department of Transportation had been required to pay
"relocation costs" to persons and businesses displaced by the
condemnation. In those instances where federal or state funds
are not available or are intentionally segregated out of a
portion of the project, the displaced owner or tenant must
personally bear the cost of relocation. Anecdotal evidence may
not be the best, but its what we have and its factual.
Wichita, which is perhaps a bad example, has had the "Kellogg
Project" underway for more than a decade. The City has now
determined that each segment of the program is a separate

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project. Using that method, it allocated all of the state and federal assistance to the east side of town where it pays relocation assistance. Those businesses located in West Wichita are told that the entire "project" of which they are a part is paid for by City funds so there is no relocation allowance. As a result, while businesses on the East side of Wichita receive substantial relocation benefits, businesses such as Ebersole Lapidary Supply, displaced on the West side of Wichita, received \$500,000.00 for its property but had to spend over \$100,000.00 in moving its goods, merchandise and equipment to its new location. Another displaced business in West Wichita, American Automotive, spent in excess of \$200,000.00 merely to move and reinstall its stock of goods and its trade fixtures to a new location a half mile away.

We are now told that a similar program to separate rail crossings from street grade has generated a similar plan. In a speech to a professional group, one of our City Engineering staff reported that federal funds would be allocated to the crossings north of mid-town and the businesses displaced south of that area would receive no relocation benefits. Their Manufacturing in Wichita will experience relocation costs of over \$1,000,000.00 and it may well force them out of business.

"Relocation Costs" are limited to the actual and reasonable costs incurred based upon competitive bids. There is no pork barrel in the process. While small units of government may not have a staff of relocation officers, there are consultant experts available throughout the state. The City of Wichita contracts the job, as does Sedgwick County and many other units of government. Moreover, since the proposed bill adopts the federal act, there is a vast body of decisions and rulings to assist in any interpretive question which might arise. Incidentally, determining relocation costs is not lawyer business; the court's are not involved because it is an administrative process, not a judicial one. Of great significance in keeping such costs so identified is that reimbursement of relocation expense is not subject to income tax. There are strict income tax rules that apply to compensation received for property taken.

We know that the Constitution of the United States and the Constitution and the laws of the State of Kansas require just compensation for property taken or damaged. It is unreasonable

Hon. John Vratil, Chairman and Members

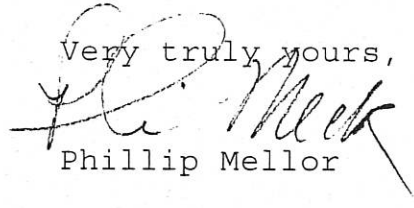
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to expect a person whose property is taken and who is forced to relocate because of condemnation to personally bear the cost when it should be spread to the public at large.

I respectfully solicit your support of House Bill No. 2032.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Phillip Mellor", written over the typed name below.

Phillip Mellor

PSM:ljv

TESTIMONY

TO: Senate Judiciary Committee
Senator John Vratil, Chairperson

SUBJECT: HB 2032

Mr. Chairman and Committee Members:

My name is John R. Hamilton. The majority of my law practice is representing property owners in eminent domain cases. I am a member of the Eminent Domain Advisory Committee of the Kansas Judicial Council which drafted the language for House Bill 2032, prior to the amendment. The Advisory Committee is comprised of a broad spectrum of attorneys who represent both landowners and condemners.

Section 1 of the bill provides that interested parties can appear in person or by an attorney. We have experienced some real estate trained people who are not attorneys trying to represent property owners at the administrative hearings and generally being pretty much ineffective. This bill does not prohibit a person from appearing *pro se*, but it does require a representative to be an attorney.

Section 2 specifically provides that when a notice of appeal is filed, the case will be docketed as a separate action and will require the payment of a docketing fee. This is the way condemnation appeals have been handled in most counties and is simply a clarification.

Section 3 is the most important and equitable part of the bill. Under existing law, relocation benefits for displaced landowners and tenants are paid only if the project is federally funded or if KDOT is involved in the acquisition. Displaced landowners and tenants who are forced to pay their own cost of moving and relocating are the real victims in eminent domain cases. If governmental entities who exercise the power of eminent domain cannot afford to reimburse the occupant for the cost of relocating, how can we expect the displaced person to suffer the cost of relocating? The bill as originally drafted would bring all condemning authorities under the Federal Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970 in all condemnation cases where a landowner or tenant is displaced. The bill as amended does not bring the condemning authority under the Act, but does establish the fact that payments and assistance for displaced persons equal to that provided under the Federal Uniform Act will be deemed reasonable.

I would urge you to give favorable consideration to this Bill.

Respectfully submitted:


John R. Hamilton

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KANSAS DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY OF TRANSPORTATION

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Secretary of Transportation

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Kathleen Sebelius
Governor

TESTIMONY BEFORE THE
SENATE JUDICIARY COMMITTEE

REGARDING HOUSE BILL 2032
EMINENT DOMAIN

March 6, 2003

Mr. Chairman and Members of the Committee:

I am Vicky Johnson, with the Kansas Department of Transportation (KDOT), Office of Chief Counsel. On behalf of KDOT, I am here to oppose House Bill 2032, as amended by the House Committee on Judiciary, concerning eminent domain and relocation assistance. There are several issues relating to this bill that the Department would like to bring to the attention of this committee for consideration.

Currently there are two statutory schemes in place relating to the acquisition of real property by eminent domain and payment of relocation assistance benefits to persons or businesses displaced by government action.

The first of these is K.S.A. 26-501 et seq. It provides the procedures for acquisition by eminent domain, appeals from the awards resulting from that process, and a statutory specification of the criteria for determining the compensation to be awarded for the land or property taken.

The second in K.S.A. 58-3501 et seq. This series of statutes was passed shortly after congress passed the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. Its purpose was to allow compliance with the federal act on federal aid projects. What the federal act requires on federal aid projects and the state law allows is payment to persons displaced by governmental projects or actions for the expenses of moving their households, businesses or personal property from land or improvements that have been purchased or acquired by eminent domain. The federal act also requires that on federal projects any property

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acquisition be preceded by an appraisal at which the property owner is given an opportunity to accompany the appraiser during his inspection of the property.

House Bill 2032 would have the following effects on these two statutory schemes.

1. The language of the bill, at New Section 3(c) calls for the new relocation provisions to be part of the eminent domain procedure act rather than part of K.S.A. 58-3501 et seq., which is the existing section dealing with relocation assistance.

---This will place relocation assistance issues on non federal aid projects under the civil appeal provisions of the eminent domain procedures act rather than the administrative hearing procedures provided in the current statutory provisions on relocation assistance; while leaving such appeals on federal aid projects under the administrative hearing procedures. Having two different appeal procedures depending on whether it is a federal aid project or not would result in considerable confusion for the displaced persons and their counsel as to the appropriate appeal procedures.

—Allowing appeal to the courts of relocation assistance issues may delay project construction. Under the existing administrative procedures, appeals can be dealt with relatively quickly. This gets the relocation assistance money in the hands of the displaced parties so that they have the funds to relocate so that project work can begin. If the appeal process is to the courts for jury trial under the eminent domain procedure act, the process will take much longer and the displaced parties may or may not have the money to get relocated and this may block the progress of the project.

2. The language of New Section 3(b) provides that “fair and reasonable relocation payments and assistance to or for displaced persons as provided under sections 202, 203, 204, 301, 302, 303, and 304 of the federal uniform relocation assistance and real property acquisition policies act of 1970, and amendments thereto, shall be deemed fair and reasonable relocation payments and assistance pursuant to this section.”

—Sections 301-304 of the federal act do not have anything to do with relocation assistance. They are a portion of the federal act dealing with acquisition procedures and most notably require a formal appraisal to be performed of the property to be acquired before negotiations with the landowner begin.

—Reference to Sections 301-304 in the context of non federal aid projects (which is the scope of the current bill) would require that full appraisals be performed on every acquisition no matter what its size or value. In many cases the cost of the appraisal would far exceed the value of the property to be acquired.

3. The current statutory language concerning the scope of appeals under the eminent domain procedure act specifically limits the issues on appeal by the language “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.” That language would be stricken by Sec. 2 of this bill.

—This deletion would remove the parameters for the appeal that confine the issues and considerations put before the jury to those that are properly considered by the court appointed appraisers in determining the award to the landowner.

—This could be interpreted to allow the landowner, on appeal, to put on evidence of damages that could not be properly submitted to the court appointed appraisers. In addition to the impact this would have on the price paid, it would also provide strong incentive for landowners to appeal the award of the court appointed appraisers whose consideration is generally limited to the items listed in K.S.A. 26-513.



League of Kansas Municipalities

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TO: Senate Judiciary Committee
FROM: Sandra Jacquot, Director of Law/Legal Counsel
DATE: March 6, 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 and attempts to provide for relocation assistance for individuals displaced by such action. When this bill came before the House Judiciary Committee, it amended Chapter 58 provisions that addressed relocation assistance whenever federal funds were used for all or part of a project. It was very broad in its application as written and would have affected any type of land acquisition by the state or political subdivision, whether or not federal funds were involved. The Committee was sensitive to the concerns of the LKM and others that it is not appropriate to require municipalities to follow federal law for all eminent domain actions when persons are displaced.

The resulting changes, however, do not quite get to the issue. First, in Section 2 of the bill, the following language has been removed: "*Provided, however,* 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." This language is crucial to eminent domain actions and should be restored in HB 2032. Removal of this language would put into controversy the actual taking and delay projects unnecessarily. Currently a separate action is required to challenge the taking. An example of the impact is the new Target distribution center in Shawnee County. Had the eminent domain action been delayed for a challenge to the taking, it is unlikely that Shawnee County would have that facility today. The takings issue was argued this week in the appellate courts.

The second problem with the current bill is how the language in New Section 3(b) is crafted. The presumption is that relocation payment and assistance will be considered reasonable if certain sections of the federal law are followed. Having discussed this section with city attorneys, however, it appears that none of the sections cited in the bill actually deal with relocation assistance to displaced persons. The LKM believes that the goal of providing relocation assistance can be accomplished simply by making it a factor that the courts address in awarding compensation. There is no need to tie the federal law to such compensation.

The League opposes this bill and the requirement of mandatory payments to displaced persons. Most cities already provide such assistance, but it becomes a matter of

policy. Should the taxpayers at large bear the cost of relocation, which is what the bill would require by adding to the cost of a project, or should an individual who has been compensated for the property bear the relocation expense? This requirement 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.

If the Committee believes it is good public policy to proceed with this concept, however, the League urges consideration to making the necessary changes to achieve the goals of the bill, without putting in motion the unintended consequences of the bill in its present form. For all of the above-stated reasons, the League of Kansas Municipalities requests that this committee report HB 2032 unfavorably.



WRITTEN TESTIMONY OPPOSING HB 2032

TO: Members of the Senate Judiciary Committee
FROM: Leonard Hall, Assistant City Attorney for the City of Olathe, Kansas

Regarding House Bill No. 2032, the City of Olathe strongly opposes this bill. The House Judiciary Committee amended the bill deleting an important part of the current eminent domain law and adding the requirement to require relocation assistance and payments in all projects regardless of whether there are federal funds involved. The bill also refers to sections in the federal laws that are not applicable to relocation assistance and payment.

DELETED SECTION ALLOWS OTHER ISSUES TO BE TRIED IN JURY TRIAL

The important part deleted from the current eminent domain law is set out in Section 2 of the bill relating to K.S.A. 26-508:

“The only issue to be determined therein shall be that of just compensation to be paid from the land or right therein taken at the time of the taking and for any other damages allowable by law.”

The impact of the deleted section would be to open an appeal of the court-appointed appraisers’ award to any issue raised during the course of the trial. Rather than having a simple trial by the court or by jury covering the issue of just compensation to be paid for the taking, either party can raise other issues not related to just compensation, resulting in a more expensive trial for both parties. The deleted section raises unknown consequences in the cost of going to trial for both the condemning authority and landowner.

Under the current law, both parties normally hire appraisers to testify about just compensation to be paid for the taking and a jury trial may last 3 to 4 days. With the proposed bill, both parties would have to do extensive discovery to determine the issues to raise at trial and to retain expert witnesses to cover unknown issues thereby extending time of trial to one week or longer. There will be higher costs to the parties in attorney fees, more expert witnesses, discovery, and longer trial.

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NEW SECTION 3 – RELOCATION ASSISTANCE & PAYMENT

House Bill No. 2032 goes beyond requiring simple relocation assistance and payment for relocation of owners and tenants. Proponents and attorneys supporting the bill refer to land acquisition cases several years ago in Wichita where the City did not pay for relocation assistance. The City of Wichita has provided a statement stating its policy now provides relocation assistance. I am not aware of any situation in Kansas over the past year where the condemning authority refused to provide relocation assistance and payment to the displaced landowner or tenant. The bill is not needed at this time.

House Bill No. 2032 will require compliance with federal regulations that are 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.

Section 3 will apply to land acquisition in all construction projects, including street, waterlines, sanitary sewer lines, parkland, and other city related facilities. 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(b), each city or county would be required to retain a certified right-of-way agent or personnel to handle relocation payments and assistance. It is difficult for untrained personnel to comply with the requirements set forth in sections 202, 203, 204, 301, 302, 303, 304 or any other section of the Federal Act. The federal act on relocation and land acquisition is complex, costly, and time-consuming and would require hiring a certified third party to handle the relocation and appraisal work. At one seminar, several city attorneys stated 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 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 million dollars to assist cities and counties in complying with federal regulations in all of their land acquisition projects?

SECTIONS 301, 302, 303, & 304 DO NOT RELATE TO RELOCATION ASSISTANCE

Section 3(b) states, "Fair and reasonable relocation payments and assistance to or for displaced person as provided under sections 202, 203, 204, 301, 302, 303 and 304 of the federal uniform relocation assistance and real property acquisition policies act of 1970, and amendments thereto, shall be deemed fair and reasonable relocation payments and assistance pursuant to this section."

In reading Sections 301, 302, 303, and 304 of the applicable act, none of these sections relate to relocation payments and assistance to or for displaced persons. Section 301 sets out the requirements for acquisition of real property and imposes numerous requirements on the condemning authority.

Section 302 pertains to requiring the condemning authority to acquire all interests in buildings, structures and improvements on the property.

Section 303 covers expenses incidental to transfer of title to United States. Section 304 pertains to litigation expenses incurred in eminent domain proceedings under the jurisdiction of the Federal Court.

None of these sections are applicable to the current eminent domain law and pose major unknown and costly consequences on the condemning authority, including the state of Kansas and many small cities across Kansas.

NEW SECTION 3 SHOULD NOT BE PART OF THE EMINENT DOMAIN LAW

The matter of relocation assistance and payment should not be part of the eminent domain law. It should be part of K.S.A. 58-3501, et seq. or the law of relocation assistance for persons displaced by acquisition of real property. The acts of acquiring property by eminent domain and providing relocation assistance and payment are separate. In Spackman v. Spackman, 3 KA 2d 400, 401, 595 P.2d 748, (1979), the Court of Appeals stated the purpose of the federally authorized (relocation) payment is to supplement traditional eminent domain compensation, not to create an additional element of full compensation.

In summary, it is not wise to require cities and counties to comply with federal regulations in land acquisition projects where federal funds are not provided. It is a costly and time-consuming mandate. The deleted section pertaining to the issue of determining just compensation to be paid for the taking of property is a very important part of the current eminent domain law. The proposed bill provides unknown consequences the Legislature, condemning authority and landowner are not aware of. It is requested the Senate Judiciary Committee take no action on this bill.

NEW SECTION 3 – RELOCATION ASSISTANCE & PAYMENT

House Bill No. 2032 goes beyond requiring simple relocation assistance and payment for relocation of owners and tenants. Proponents and attorneys supporting the bill refer to land acquisition cases several years ago in Wichita where the City did not pay for relocation assistance. The City of Wichita has provided a statement stating its policy now provides relocation assistance. I am not aware of any situation in Kansas over the past year where the condemning authority refused to provide relocation assistance and payment to the displaced landowner or tenant. The bill is not needed at this time.

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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. 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(b), each city or county would be required to retain a certified right-of-way agent or personnel to handle relocation payments and assistance. It is difficult for untrained personnel to comply with the requirements set forth in sections 202, 203, 204, 301, 302, 303, 304 or any other section of the Federal Act. The federal act on relocation and land acquisition is complex, costly, and time-consuming and would require hiring a certified third party to handle the relocation and appraisal work. At one seminar, several city attorneys stated that numerous errors and mistakes were committed by city staff attempting to comply with the federal act.

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Leonard Hall



KANSAS
ASSOCIATION OF
COUNTIES

WRITTEN TESTIMONY
Before the Senate Judiciary Committee
HB 2032
March 6, 2003

By Judy A. Moler, General Counsel/Legislative Services Director

Thank you, Chairman Vratil and Members of the Senate Judiciary Committee for allowing the Kansas Association of Counties to provide written testimony on HB 2032.

The Kansas Association of Counties is opposed to HB 2032. The bill as written removes crucial language in order for local governments to move forward in eminent domain matters and making cogent decisions for their communities. The language that was removed in Section one of the bill raises questions about the actual taking and could delay projects that could put projects in jeopardy.

With the omission of the language in section one and the requirement of mandatory payments currently in the bill, the Kansas Association of Counties opposes the bill. However, the KAC would be willing to work on the stated goals of the bill with interested parties.

The Kansas Association of Counties, an instrumentality of member counties under K.S.A. 19-2690, provides legislative representation, educational and technical services and a wide range of informational services to its member counties. Inquiries concerning this testimony should be directed to Randy Allen or Judy Moler by calling (785) 272-2585.

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Senate Judiciary
3-06-03
Attachment 8-1



Erik Sartori
(Written)

City Manager's Office

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Testimony Before
The Senate Judiciary Committee
Regarding
House Bill 2032

March 6, 2003

The City of Overland Park appreciates the opportunity to testify on House Bill 2032. It opposes HB 2032 because of the additional financial burden placed on condemning authorities.

Cities currently must pay relocation compensation when a project utilizes federal funds, in compliance with federal procedures. Additionally, the City has often paid relocation costs in instances where such payment was not required. Mandating payment of those costs, however, will make it more difficult for cities to execute public works projects and will further erode a cities prerogative in determining under what conditions relocation payments should be made.

House Bill 2032 forces municipalities to jump through federal hoops, regardless of the presence of federal funds. Given the financial straits faced by municipalities, a new state mandate for compensation is unwelcome. Do we move forward with projects to increase public safety and decrease traffic congestion, or do plans for those projects erode because of increased compensation costs and an atmosphere of uncertainty as to how House Bill 2032 will be interpreted?

In Section 2, the bill contains a potentially significant broadening of the scope of issues that can be judicially reviewed. Under the current K.S.A. 26-508, the only issue to be determined by the court is "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." As passed by the House, HB 2032 removes this focused scope, and now potentially broadens those issues that the Court can consider on review. Such broadening of the court's authority may have a chilling effect on cities moving forward with condemnation proceedings, and the public improvements that are the beneficiaries of the acquired property.

Given the potential for added costs and the uncertainty that accompanies the proposed legislation, the City of Overland Park requests that you oppose House Bill 2032.

Senate Judiciary

3-06-03
Attachment 9-1

1 (description of lands). Such hearing will commence at _____ o'clock ____M. on the _____
2 day of _____, 19 (year) at _____, or on the following day without further
3 notice, and may be continued thereafter from day to day or place to place until the same is
4 concluded with respect to all properties involved in the action. Any party may *appear in*
5 *person or by an attorney and may* present either oral or written testimony *by the landowner*
6 *or other witnesses* at such hearing.

7 You are further notified that the court has set the _____ day of _____, 19 (year),
8 for the filing of the awards of these appraisers with the clerk of the court, and any party
9 dissatisfied with the award may appeal therefrom as by law permitted within thirty 30 days
10 from the day of filing.

11 _____ Appraisers.

12 Sec. 2. K.S.A. 26-508 is hereby amended to read as follows: 26-508.
13 If the plaintiff, or any defendant, is dissatisfied with the award of the
14 appraisers, ~~he may;~~ *such party,* within ~~thirty (30)~~ 30 days after the filing
15 of the appraisers' report, *may* appeal from the award by filing a written
16 notice of appeal with the clerk of the district court *and paying the docket*
17 *fee of a new court action.* In the event any parties shall perfect an appeal,
18 copies of such notice of appeal shall be mailed to all parties affected by
19 such appeal, within three (3) days after the date of the perfection thereof.
20 An appeal by the plaintiff or any defendant shall bring the issue of dam-
21 ages to all interest *interests* in the tract before the court for trial *de novo.*
22 The appeal shall be docketed as a *new* civil action and tried as any other
23 civil action. ~~Provided, however.~~ *The only issue to be determined therein*
24 *shall be that of just compensation to be paid for the land or right therein*
25 *taken at the time of the taking and for any other damages allowable by*
26 *law the compensation required by K.S.A. 26-513, and amendments*
27 *thereto.*

28 —Sec. 3. K.S.A. 58-3502 is hereby amended to read as follows: 58-
29 3502. ~~Whenever any program or project is undertaken by the state of~~
30 ~~Kansas, any agency or political subdivision thereof, under which federal~~
31 ~~financial assistance will be available to pay all or part of the cost of such~~
32 ~~program by reason of a grant from or contract or agreement with the~~
33 ~~federal government, and any condemning authority which program or~~
34 ~~project will result in the displacement of any person by acquisition of real~~
35 ~~property, or by the direct result of building code enforcement activities,~~
36 ~~rehabilitation or demolition programs, the state, agency, or political sub-~~
37 ~~division may condemning authority shall:~~

38 —(1) ~~Provide fair and reasonable relocation payments and assistance to~~
39 ~~or for displaced persons as are required under sections 202, 203 and 204~~
40 ~~of the federal act;~~

41 —(2) ~~Provide relocation assistance programs offering to displaced per-~~
42 ~~sons and others occupying property immediately adjacent to the real~~
43 ~~property acquired, the services described in section 205 of the federal act~~

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.

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TOPEKA
 HOUSE OF
 REPRESENTATIVES

REPRESENTATIVE, SIXTY-FOURTH
 CLAY, DICKINSON, GE,
 AND RILEY COUNTIES

STATE CAPITOL
 ROOM 303-N
 TOPEKA 66614-1504
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COMMITTEE ASSIGNMENTS
 CHAIR: EDUCATION
 MEMBER: EDUCATION BUDGET

Testimony in support of HB2017

Thank you Mr. Chairman and committee members. As a past President and current Vice President of the Corrections/Juvenile Justice Oversight Committee I am supporting the continuation of the Joint Committee for two years.

Myself, as well as Sen. Adkins, Sen. Goodwin and Rep. Pauls have submitted a letter stating our collective support. With a change in leadership in the agency as well as a new Governor I believe it is very important for the oversight to continue because the legislature will have tough decisions in the next few years in regards to both agencies. The Juvenile Justice Authority is relatively new as State Agencies go and the intent of the legislature is important to be carried out. I believe with oversight from legislators gives them guidance.

Rep. Kathe Decker
 64th District

Senate Judiciary

3-06-03

Attachment 10-1

STUART J. LITTLE, Ph.D.
Government Relations Consultant

March 6, 2003

Testimony before Senate Judiciary Committee
House Bill 2017

Dear Chairman Vratil and Members of the Senate Judiciary Committee,

I am unable to attend the hearing today, but I appreciate the opportunity to provide written testimony on behalf of the Kansas Community Corrections Association in support of HB 2017. Community Corrections programs provide cost-effective community-based supervision for adult and juvenile offenders with lower severity level offenses (although the offenders are increasingly more severe and high-risk). The courts determine whether an offender is assigned to regular probation (through the courts) or intensive supervise probation in a community corrections program.

Community Corrections organizations appreciate the role and duties of the Joint Committee on Corrections and Juvenile Justice Oversight. As one of the largest service providers for both the Department of Corrections and the Juvenile Justice Authority, we welcome the opportunity to work with members of the legislature during the more contemplative seasons and explore policy issues. We enjoy having legislators during the legislative session who have built up a body of knowledge and experience with our issues. The membership on this committee has changes a great deal over the last years, exposing many of your colleagues to this important area of public safety and state government. Short-term concerns over miniscule cost of an interim committee should not detract from what is a good value for the legislature and Kansas.

Senate Judiciary

3-06-03
Attachment 11-1