

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:35 a.m. on Tuesday, March 16, 2004, in Room 123-S of the Capitol.

All members were present except:

Senator David Haley -Arrived 9:45

Committee staff present:

Mike Heim, Kansas Legislative Research Department  
Jill Wolters, Office of the Revisor Statutes  
Helen Pedigo, Office of the Revisor Statutes  
Dee Woodson, Committee Secretary

Conferees appearing before the committee:

Nola Wright, Assistant Attorney General  
Tyler Robinson, University of Kansas student, National Association to Protect Children, and Students PROTECT Kansas

Others attending: See attached list.

**Sub HB 2815 - Aggravated indecent solicitation child, severity level 3, person felony increase from a severity level 6, person felony**

Chairman Vratil opened the hearing on **HB 2815**. Nola Wright, Attorney General's Office, testified in support of the bill. She related that studies have shown that incarcerated child molesters continue to victimize young children once they are released on parole. She said recidivism occurs when there is a new arrest, new conviction or new commitment to custody. It does not include sex offenses that occur but aren't reported. She added that the recidivism rates for sex offenders are staggering, and suggest that incarceration is ineffective and nether deters nor rehabilitates sex offenders.

Ms. Wright explained different types of sex offenders and the various methods used to seduce a child. She told the Committee the Association for the Treatment of Sexual Abusers states that "although many, if not most, sexual abusers are treatable, there is no known cure. Management of sexually abusive behavior is a life-long task for some sexual abusers." She testified that the average sentence for aggravated indecent solicitation of a child is 36 months. Ms. Wright concluded by stating that increasing the level of penalties for seduction can interrupt the deviant cycle of a molester and possibly prevent him from going further. (Attachment 1)

Chairman Vratil called attention to the bed space impact or fiscal note on **HB 2815**. Patricia Biggs, Executive Director of the Kansas Sentencing Commission, said there was an estimated increase of 24 additional beds in 2005, and 227 additional beds in 2014. Copies of the fiscal note were furnished to Committee members. (Attachment 2)

Tyler Robinson, on behalf of the National Association to Protect Children and Students PROTECT Kansas, spoke in favor of **HB 2815**. He stated the organizations he represented strongly support raising the penalty for aggravated indecent solicitation of a child from a level 6 person felony to a level 3 person felony. (Attachment 3)

Brief questions and discussion followed.

There being no other conferees to testify, the Chairman closed the hearing on **HB 2815**.

**Final Action on:**

**SB 547 - Limitation on exercise of eminent domain**

Chairman Vratil called for discussion and final action on **SB 547**. He explained the bill, and called attention to a proposed amendment Senator Tyson had distributed to Committee members. The Chairman asked Senator Tyson to explain his proposed amendment. Senator Tyson said the amendment was a compromise to get something that would work not only to restrict eminent domain for the taking of

CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE at 9:35 a.m. on Tuesday, March 16, 2004, in Room 123-S of the Capitol.

private property for use by a private person, but also to allow a one year lease provision for the people that want to work with KDOT along the right-of-way or for schools that want to let people use the schools. He thought this would solve some of the problems with the SB 547.

(Attachment 4)

Senator Schmidt said he had a balloon amendment to offer for consideration on SB 547, and distributed copies to Committee members. He explained that what the Committee was talking about was a constitutionally protected right to private property. He said that over the past several decades the Courts, which have historically defended that right, have allowed it to be eroded because they have gone through the same sort of analysis that the Committee is going through. He stated that he felt his amendment would be a better public policy choice to make. Senator Schmidt emphasized that he did not want to come in conflict with the drafters of the bill, and he would not be the one to offer up this amendment since there had been an agreement worked out. (Attachment 5)

Chairman Vratil stated that he thought the Committee should weigh both offered amendments, and did not believe that Senator Schmidt's amendment was inconsistent with the other proposed amendment.

Committee comments and discussion followed.

Senator Schmidt made a motion to offer his amendment which would strike the language on page 1, line 16, beginning with "Notwithstanding any provision.... through line 25, and insert his balloon amendment. The motion was seconded by Senator Haley.

Committee questions and discussion followed.

Chairman Vratil called for a vote on Senator Schmidt's motion to amend SB 547. The motion carried.

Senator Goodwin moved to adopt a balloon amendment proposed by the Kansas Livestock Association (KLA). She explained that it requires that anything taken by eminent domain to meet all the local, state, and federal permits to use and develop that property. She said on page 2 of the bill it adds the language, "and (4) a showing that all required local, state and federal permits to use or develop any such property have been obtained pursuant to section 1, and amendments thereto." The motion was seconded by Senator Schmidt. (Attachment 6)

Following discussion on the amendment, the Chairman said he could see some problems with including "local" on both parts, and suggested that "local" should be deleted if that was acceptable to the motion maker and the second. Senators Goodwin and Schmidt agreed to the change in the motion.

Further discussion continued on the proposed amendment.

Chairman Vratil called for a vote on Senator Goodwin's motion to amend SB 547 in accordance with KLA's balloon amendment. The motion carried.

Considerable discussion followed regarding other possible amendments, but no motions were offered.

Senator Haley moved to recommend SB 547 favorably for passage as amended, seconded by Senator O'Connor, and the motion carried.

The Chairman adjourned the meeting at 10:30 a.m. The next scheduled meeting is Wednesday, March 17, 2004.

# SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Tues., March 16, 2004

NAME	REPRESENTING
Judy Jacquet	LKM
Erik Sartorius	City of Overland Park
Lynn Wobker	SAKW
Gene Scamiot	AG - Crime Victims Rights
Nole Wright	AG - Crim. Div.
Jodie Jones	Attorney General
Karen Olsen	Attorney General
Ronda Hutton	Attorney General
Allie Durbin	Ks. Luncheon Association
Ferry Maple	KHP
Co Kupper	TOPCHA Police Dept.
Mike Jennings	Ks. Co. Dist Atty Assoc.
Steve Johnson	Kansas Gas Service / ONEOK
Robert Tyson	Senate
Jack Graves	Deputy - P H & N. Y. G. Co.
Sally Howard	KDOT
Bill Vicory	KDOT
Patricia Bigas	KSC
Julienne Noble	Gov office

SENATE JUDICIARY COMMITTEE GUEST LIST

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DATE: Tues., March 16, 2004

NAME	REPRESENTING
Jalynn Lopp	Governor's office
Jeff Bottabony	Kansas Spearing Corp
TYLER B. ROBINSON	NAT'L PROTECT + STUDENTS PROTECTORS
Derrick Lontag	KSAB
JEREMY S BARCLAY	KDOC
Connie Burton	Kan Farm Bureau
Lyneda Rivers	KANSAS FARM BUREAU
Amy Bertrand	KS Criminal Justice Information Committee
Mark Schreiber	Westar Energy
Dave HERRMAN	KEC
JOHN C. BOTTENBERG	Westar Energy
MIKE MARTIN	Ks Farm Bureau
Jerry V Eggleston	Ks Farm Bureau
Joan Bassett	Sen. Pugh's Secretary
Brenda Harmon	KSC
Julia Butler	KSC
Mike Bright	REAP
Danielle Noe	Johnson County
Mike Legoon	Sedwick County





State of Kansas

Office of the Attorney General

120 S.W. 10TH AVENUE, 2ND FLOOR, TOPEKA, KANSAS 66612-1597

PHILL KLINE  
ATTORNEY GENERAL

MAIN PHONE: (785) 296-2215  
FAX: 296-6296

March 16, 2004

To: Senate Judiciary Committee  
From: Nola Wright, Assistant Attorney General

Re: Sub HB 2815: Aggravated Indecent Solicitation of a Child

Chairman Vratil and Members of the Committee:

My name is Nola Wright, I am an Assistant Attorney General. My primary duties involve the sexually violent predator commitment hearings, and handling sex abuse cases in the Criminal Division of the Attorney General's office in Topeka.

I am a member of the prosecutor's review committee pursuant to K.S.A. 59-29101 et seq, commonly known as the Sexually Violent Predator Act. Every month, I review between 25-40 files of prisoners who have been convicted of sex offenses, primarily against children, and who are about to be released from prison. It is the charge of our committee to decide which sex offender may meet the criteria of the KsSVP. In the civil commitment hearings, my evidence is primarily the testimony of psychologists and psychiatrists, who are experts in the field of sex offender treatment and management. As a result, I have learned a great deal about child molesters, and their insidious methods.

**Information Regarding Recidivism**

Studies have shown that incarcerated child molesters continue to victimize young children once they are released on parole. Recidivism occurs when there is a new arrest, new conviction or new commitment to custody. It does not include sex offenses that occur but aren't reported.

Recidivism rates for sex offenders are truly staggering and suggest that incarceration is ineffective and neither deters nor rehabilitates sex offenders. On average, an adolescent sex offender may be expected to commit up to 380 sex crimes during his lifetime, despite incarceration, See Don Riesenber, Motivations Studied and Treatments Devised in Attempt to Change Rapists' Behavior, 257 JAMA 899, 900 (1987) (stating that the number also includes...)

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lesser offenses such as exhibitionism). and studies have revealed recidivism rates as high as eighty percent.

Fred Berlin, founder of the Sexual Disorders Clinic at Johns Hopkins University, noted the high rate of recidivism in the United States when he stated that "molesters [in the United States] may have a recidivism rate as high as 65%.

Several studies support the hypothesis that sexual offense recidivism rates are underreported. The National Crime Victimization Surveys Bureau of Justice Statistics indicate that only 32 % of sexual assaults against persons 12 or older are reported to law enforcement. A three-year longitudinal study (Kilpatrick Edmunds and Seymour 1992) of 4,008 adult women found that 84% of respondents who identified themselves as rape victims did not report the crime to authorities. Marshall and Barbaree (1990)) found that the number of subsequent sex offenses revealed through unofficial sources was 2.4 times higher than the number than was recorded in official report. In addition, research using information generated through polygraph examinations on a sample of imprisoned sex offenders with few than *two known victims* (on average) found that these offenders actually had an average of *110 victims and 318 offenses*. (Alhmeyer, Heil, McKee and English, 2000) Another polygraph study found a sample of imprisoned sex offenders to have extensive criminal histories, committing sex crimes for an average of 16 years before being caught.( Id, 1999)

Different types of sex offenders had different rates of recidivism:

Incest Offenders:	4-10%
Rapists:	7-35%
Child Molesters with females:	10-29%
Child Molester with males:	13-40%
Exhibitionists:	41-71%

(Marshall and Barbaree 1990)

### **Treatment vs. Cure**

The Association for the Treatment of Sexual Abusers (ASTA), the largest professional organization on the treatment of sex offenders in the world, states that "although many, if not most, sexual abusers are treatable, there is no known cure. Management of sexually abusive behavior is a life-long task for some sexual abusers." No one in the sex offender treatment field even speaks of a "cure" any more than alcohol and drug counselors speak of a cure for alcoholism or drug addiction. ( Anne C. Salter, PhD)

### **Seduction of Children**

The average sentence for Aggravated Indecent Solicitation of Child is 36 months. It is what I call a "gateway crime" for pedophiles. It is part of a an overall plan that pedophiles use to test their victims - how far can I get? If I can lure this child to a certain point, can I then go further?

According to research and study, most child molestation is premeditated. Pedophiles spend a great deal of time thinking about and planning how they can gain access to a child. They are patient, and creative. Methods of seduction include: (and this is where Aggravated Indecent Solicitation of A Child comes into play) are as follows:

**Narcotics and/or alcohol** - also used a guilty tactic, as well as reducing inhibitions

**Affection and Attention** - making them feel special, buying them presents,

**Misrepresentation of Moral Values** - (convincing a child that what the offender wants is a legitimate activity, such as nudity (nude beaches and nudist camps) pornography - left out for the child to discover, playing on a child's innate curiosity about sex,

**Subtle exposure to the concept of sexual activity** - to desensitize the child to the concept of sexual activity .By constantly talking to the child about sexual activity, showing him pictures and magazines, or participating in sexual activities in the presence of the child, the offender slowly indoctrinates the child into the world of sex. ( Example: walking around nude in front of a child or half-clothed, claiming that he had a "skin disorder" and he couldn't wear clothes, got the child used to seeing him naked, and thinking it was okay.)

**Mislabeling the Activity** - Example - playing games like wrestling, tickling, where the offender would brush against or grab a child's genitals, and the child knows what's going on - labels it "okay" because they are just playing. "Teaching" little girls how to dance, posing children for photos under the pretext it is for "medical" reasons, etc.

**Curiosity of the child** - often done by leaving sexually oriented materials out and available to the child, such as the books, videos, sexual aids. It is common to discover sexual aids in the shape of penises, ranging in size from that of a 4-5 years old boy to oversized exaggerations, in the possession of child molesters. The conversations initiate sexual play.

**Rewards and Bribes** - as elaborate as a car, or simple as an ice cream cone

**Blackmail**- once the child is in a compromising situation, sexually or otherwise - the offender can obtain some control over the child by threatening exposure. Offender knows that the child feels guilty and is wrought by shame, even if there has been no sexual contact.

**Misuse of Authority** - Youth group leader, teacher, etc - getting a child to do something because the offender is in a position of authority

The above listed methods of seduction are all examples of Aggravated Indecent Solicitation of a Child. Once the offender has used these methods of seduction on a child, the acts of touching will soon follow, depending on how the child reacts to the seduction. Increasing the level of penalties of this seduction can interrupt the deviant cycle of a molester, and hopefully, prevent him from going further.



MEMORANDUM  
**KANSAS**

To: Duane A. Gosser, Director of the Budget

ATTN: Jeff Arpin  
KANSAS SENTENCING COMMISSION  
From: Patricia Biggs, Executive Director  
Honorable Ernest L. Johnson, Chairman  
District Attorney Paul Morrison, Vice Chairman  
Patricia Ann Biggs, Executive Director  
Date: March 11, 2004

KATHLEEN SEBELIUS, GOVERNOR

RE: Fiscal Note on Sub. HB 2815

AN ACT concerning crimes, punishment and criminal procedure; relating to aggravated indecent solicitation of a child; amending K.S.A. 21-3511 and K.S.A. 2003 Supp. 22-3303 and repealing the existing sections.

**This bill will have an impact upon the Kansas Sentencing Guidelines Act (KSGA).** This bill would:

- increase aggravated solicitation of a child from a severity level 6, person felony to a severity level 3, person felony

**Section 1** Amends K.S.A. 21-3511 to increase aggravated indecent solicitation of a child from a severity level 6, person felony to a severity level 3, person felony.

**Section 2** Amends K.S.A. 2003 Supp. 22-3303 (regarding Commitment of incompetent; limitation; civil commitment proceedings; regained competency; credit for time committed) to provide for the inclusion of a violation of 21-3511 in the severity level 1-3 grouping and not as a separately included crime.

**Section 3** repeals K.S.A. 31-3511 and K.S.A. 2003 Supp. 22-3303.

**Section 4** sets the effective date as publication in the statute book.

**IMPACT ON KANSAS SENTENCING COMMISSION:**

Based on the current duties of the Kansas Sentencing Commission, the change proposed in this bill will have no affect on the following:

1. The current operation or responsibilities of the Commission :
2. The current budget of the Commission.
3. The current staffing and operating expenditure levels of the Commission.
4. The long-range fiscal estimates of the Commission.

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**IMPACT ON PRISON ADMISSIONS – this section**

Increase by an estimated: 24 additional admissions in 2005; 27 additional admissions in 2014.

- Potential to increase but cannot quantify  
 Decrease by an estimated:  
 Potential to decrease but cannot quantify  
 Remain the same

**IMPACT ON OFFENDER POPULATION LEVELS – this section**

have impact on offender population as noted below - 24 additional beds in 2005; 227 additional beds in 2014.

- have the potential to impact offender population as noted below.  
 have minimal or no impact on offender population.  
 have impact but cannot be quantified with data available.

Notes:

In FY 2003, 41 offenders were convicted of the crime of aggravated indecent solicitation of a child. Of this number:

- 7 (17%) were sentenced to prison
- 34 (83%) were sentenced to probation.

During FY 2003, 17 offenders were admitted to prison. Of this number:

- 7 (41%) were new court commitments
- 8 (47%) were probation condition violators
- 2 (12%) were parole violators with a new sentence.

The average length of sentence is 36.8 months.

Under current policy, by the year 2005, these offenders will use 17 prison beds; by the year 2014, these offenders will use 54 prison beds.

By changing the applicable severity level from nondrug severity level 6 to nondrug severity level 3 the following changes are anticipated:

Admissions:

- By 2005 there will be 41 prison admissions.
  - This is an increase in admissions of 24.
- By 2014 there will be 47 prison admissions.
  - This is an increase in admissions of 27.

Bed Space:

- By 2005 there will be 41 beds needed.
  - This is an increase of 24 prison beds needed in 2005.
- By 2014 there will be 281 beds needed.
  - This is an increase of 227 beds needed in 2014.

Assumptions:

- Target inmates as defined in this section of this bill include any person convicted of the crime of aggravated indecent solicitation of a child.
- Projected admissions to prison are assumed to increase by an annual average of one point five percent. Bed space impacts are in relation to the baseline forecast produced in September 2003 and revised in November 2003 by the Sentencing Commission.
- Percentage of target inmate sentences served in prison (initial incarceration current crimes) is 85 percent. This is consistent with the projections released in September and revised in November,

2003.

- The severity level of aggravated indecent solicitation of a child is raised from nondrug severity level 6 person felony to nondrug severity level 3 person felony.

#### Prison Admission Impact Assessment

KANS	June of Each Year	Baseline Admission	Impact Admission	Additional Admission	GOVERNOR
Dist	2005	17	41	24	
	2006	18	42	24	
	2007	18	42	24	
	2008	18	43	25	
	2009	18	44	26	
	2010	19	44	25	
	2011	19	45	26	
	2012	19	46	27	
	2013	19	46	27	
	2014	20	47	27	

#### Prison Bedspace Impact Assessment

June of Each Year	Baseline Beds Needed	Impact Beds Needed	Additional Beds Needed
2005	17	41	24
2006	33	83	50
2007	44	125	81
2008	43	168	125
2009	47	204	157
2010	41	225	184
2011	46	242	196
2012	46	251	205
2013	48	269	221
2014	54	281	227

#### SUMMARY OF Sub. HB 2815 IMPACT:

- Admissions:** The impact of this bill will result in 24 additional prison admissions in FY 2005 and 27 additional prison admissions in FY 2014.
- Prison Beds:** The impact of this bill will result in the need for 24 additional prison beds by FY 2005 and 227 additional prison beds by FY 2014.

**Testimony of Tyler B. Robinson**  
*on Behalf of the*  
**National Association to Protect Children**  
**and Students PROTECT—Kansas**  
**Before the Kansas Senate Judiciary Committee**

In Support of **House Bill 2815**, Committee Substitute

Tuesday March 16, 2004

Mr. Chairman and Senators, thank you for the opportunity to testify before you today on House Bill 2815. I am Tyler Robinson, from Lawrence, Kansas. I am a student at the University of Kansas, majoring in elementary education, and a Marine Corps officer candidate. I am here today to speak on behalf of the National Association to Protect Children—also known as PROTECT—and also on behalf of Students PROTECT-Kansas, a student chapter of our national organization.

PROTECT is a national, nonpartisan membership association dedicated to fighting for abused and neglected children. We are just over a year old, but we now have members in 48 states and 6 countries. Our agenda is very focused and mainstream: we work for tougher, better laws to protect children and for more help for child victims of abuse and neglect. We are not the typical child advocacy group. Instead, PROTECT is structured the same way as the AARP or the NRA (a membership association and political lobby), and in fact we have been called an “NRA for abused kids.”

Our members are very diverse. The police department in Oneida, Wisconsin has put PROTECT decals on all of their patrol cars. At the same time, a punk rock band in San Francisco is doing benefit concerts. Our members include many bikers, parents, prosecutors, survivors of child abuse and – of course – both liberals and conservatives.

Finally, let me just say by way of background that in our short life, PROTECT has already gotten legislative passed in North Carolina, Arkansas, Illinois and Virginia. We are now working in California to close very destructive loopholes that allow child sexual abusers to escape mandatory prison time if their victim is their own child. In Kansas, PROTECT and Students PROTECT-Kansas are focusing our efforts on the very serious issues of child pornography and the enticement of minors, through the internet or by other means.

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Testimony of Tyler Robinson, PROTECT and Students PROTECT-Kansas  
March 16, 2004

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The current substitute bill for House Bill 2815 is very simple, and so I will keep my remarks short and simple. We strongly support raising the penalty for *Aggravated indecent solicitation of a child* from a level 6 person felony to a level 3 person felony.

Senators, as you know, this crime involves very young victims—aged 13 or younger. It also involves extremely dangerous behavior. An adult who entices or attempts to lure a young child for the purpose of sexually molesting them is an extremely dangerous predator.

The vast majority of Kansans would wonder why this crime was ever made a level 6 person felony in the first place. Unfortunately, many policymakers still regard crimes like these as less than severe, since presumably the crime intended was never brought to completion. It fits nicely into a scheme of graduated punishment: a relatively light penalty for proposing illegal acts, with penalties becoming more severe as the actual abuse becomes more severe. PROTECT does not argue with this approach in general.

However, we want to strongly stress that enticing or soliciting a child for sex should always be taken extremely seriously. Given the epidemic scale of child sexual abuse, the relatively tiny number of criminal prosecutions that ever result, and the devastating toll these crimes take on vulnerable children, PROTECT believes that a civilized society cannot afford the luxury of waiting to catch sexual predators in the act, or worse, waiting until their damage is already done.

The fact is that acts such as “inviting, persuading or attempting to persuade a child... to enter any vehicle, building, room or secluded place” for the purpose of having sex should be treated extremely seriously. It is an act of attempted terrorism... targeted directly at our sons and daughters.

Finally, I would like to add, as a member of Students PROTECT, a few words about online enticement. I think that young people today have a better perspective on the dangers facing children today than most older adults do. Teenagers, and even younger children, are online, and they are very vulnerable. Most parents have no idea what their children are exposed to, or how quickly it can happen. As your committee and the Kansas legislature look at this important issue over the next few years, we hope that we can be a resource for you.

Testimony of Tyler Robinson, PROTECT and Students PROTECT-Kansas  
March 16, 2004

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One trend that we see is a coming explosion of child pornography, transmitted over the internet. The aggressive distribution of child pornography is a form of enticement and *mass grooming* it itself, as predators attempt to lure children into being exploited by convincing them that such behavior is normal, in fact widespread. This enticement is the real danger posed to children by the internet. And these unspeakable images, which most citizens could never even imagine, are now flooding the internet.

We believe that within the next two years, this issue will explode into the public consciousness, as normal people like you and me are exposed for the first time through spam email or the internet to actual, horrifying images of child molestation. When that happens, Senators, House Bill 2815 will look like the most modest legislative initiative possible. You'll be hearing not only from us students, but from a few moms and dads as well.

Thank you again for the opportunity to testify in support of this bill. We'd like to thank Attorney General Kline for his commitment to this issue and each of you for improving Kansas laws to protect children.

Sen. Tyso

**PROPOSED** Substitute for Senate Bill No. 547  
By Committee on Judiciary

AN ACT concerning private property; relating to certain limitations on the taking of such property.

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

Section 1. Notwithstanding any provision of law to the contrary, in any taking of private property pursuant to law: (a) There shall be no sale, conveyance or transfer of such property to a private entity for a period of 10 years after such taking or appropriation; and (b) there shall be no lease of such property by the condemning authority to a private entity for a term of more than one year, except upon specific approval by virtue of legislative enactment that specifies the occasions, modes, conditions and agencies for such private property's taking or appropriation.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

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Attachment 4

SENATE BILL No. 547

By Committee on Ways and Means

2-26

9 AN ACT concerning eminent domain; relating to certain limitations on  
10 taking of private property; amending K.S.A. 26-513 and repealing the  
11 existing section.  
12

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

14 Section 1. K.S.A. 26-513 is hereby amended to read as follows: 26-  
15 513. (a) *Necessity.* Private property shall not be taken or damaged for  
16 public use without just compensation. ~~Notwithstanding any provision of~~  
17 ~~law to the contrary, in any taking of private property pursuant to law:~~  
18 ~~(1) There shall be no sale, lease or transfer of such property to a private~~  
19 ~~entity for a period of 30 years after such taking or appropriation; and (2)~~  
20 ~~there shall be no use of such private property by a private entity for a~~  
21 ~~period of 30 years after such taking or appropriation that results in com-~~  
22 ~~mmercial or economic benefit to the private entity, except upon specific~~  
23 ~~approval by virtue of legislative enactment that specifies the occasions,~~  
24 ~~modes, conditions and agencies for such private property's taking or~~  
25 ~~appropriation.~~

26 (b) *Taking entire tract.* If the entire tract of land or interest in such  
27 land is taken, the measure of compensation is the fair market value of the  
28 property or interest at the time of the taking.

29 (c) *Partial taking.* If only a part of a tract of land or interest is taken,  
30 the compensation and measure of damages is the difference between the  
31 fair market value of the entire property or interest immediately before  
32 the taking, and the value of that portion of the tract or interest remaining  
33 immediately after the taking.

34 (d) *Factors to be considered.* In ascertaining the amount of compen-  
35 sation and damages, the following nonexclusive list of factors shall be  
36 considered if such factors are shown to exist. Such factors are not to be  
37 considered as separate items of damages, but are to be considered only  
38 as they affect the total compensation and damage under the provisions  
39 of subsections (b) and (c) of this section. Such factors are:

- 40 (1) The most advantageous use to which the property is reasonably  
41 adaptable.
- 42 (2) Access to the property remaining.
- 43 (3) Appearance of the property remaining, if appearance is an ele-

The taking of private property for the purpose of selling, leasing or transferring such property to any private entity to be used by such private entity for industrial or economic development shall not constitute public use. It shall be prima facie evidence that the purpose of such taking was industrial or economic development if such sale, lease or transfer resulted in commercial or economic benefit to the private entity.

Senate Judiciary  
3-16-04  
Attachment 5



P. 9132966668  
FAX NO. 9132966668  
REVISOR OF STATUTES  
MON 03:02 PM

Section of 2004

SENATE BILL No. 547

By Committee on Ways and Means

2-26

Proposed amendment  
Kansas Livestock Association  
March 15, 2004

9 AN ACT concerning eminent domain; relating to certain limitations on  
10 taking of private property; amending K.S.A. 26-513 and repealing the  
11 existing ~~section~~

26-502 and  
sections

12  
13 Be it enacted by the Legislature of the State of Kansas:

14 Section 1. K.S.A. 26-513 is hereby amended to read as follows: 26-  
15 513. (a) *Necessity*. Private property shall not be taken or damaged for  
16 public use without just compensation. *Notwithstanding any provision of*  
17 *law to the contrary, in any taking of private property pursuant to law:*  
18 *(1) There shall be no sale, lease or transfer of such property to a private*  
19 *entity for a period of 30 years after such taking or appropriation, and (2)*  
20 *there shall be no use of such private property by a private entity for a*  
21 *period of 30 years after such taking or appropriation that results in com-*  
22 *mmercial or economic benefit to the private entity, except upon specific*  
23 *approval by virtue of legislative enactment that specifies the occasions,*  
24 *nodes, conditions and agencies for such private property's taking or*  
25 *appropriation.*

26 (b) *Taking entire tract*. If the entire tract of land or interest in such  
27 land is taken, the measure of compensation is the fair market value of the  
28 property or interest at the time of the taking.

29 (c) *Partial taking*. If only a part of a tract of land or interest is taken,  
30 the compensation and measure of damages is the difference between the  
31 fair market value of the entire property or interest immediately before  
32 the taking, and the value of that portion of the tract or interest remaining  
33 immediately after the taking.

34 (d) *Factors to be considered*. In ascertaining the amount of compen-  
35 sation and damages, the following nonexclusive list of factors shall be  
36 considered if such factors are shown to exist. Such factors are not to be  
37 considered as separate items of damages, but are to be considered only  
38 as they affect the total compensation and damage under the provisions  
39 of subsections (b) and (c) of this section. Such factors are:

40 (1) The most advantageous use to which the property is reasonably  
41 adaptable.

42 (2) Access to the property remaining.

43 (3) Appearance of the property remaining, if appearance is an ele-

No private property shall be taken through the exercise of the right of eminent domain prior to a showing stated in the petition filed pursuant to K.S.A. 26-502, and amendments thereto, that all required local, state and federal permits to use or develop any such property have been obtained.

Senate Judiciary  
3-16-04  
Attachment 6

6-2

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1 ment of value in connection with any use for which the property is rea-  
2 sonably adaptable.

3 (4) Productivity, convenience, use to be made of the property taken,  
4 or use of the property remaining.

5 (5) View, ventilation and light, to the extent that they are beneficial  
6 attributes to the use of which the remaining property is devoted or to  
7 which it is reasonably adaptable.

8 (6) Severance or division of a tract, whether the severance is initial  
9 or is in aggravation of a previous severance; changes of grade and loss or  
10 impairment of access by means of underpass or overpass incidental to  
11 changing the character or design of an existing improvement being con-  
12 sidered as in aggravation of a previous severance, if in connection with  
13 the taking of additional land and needed to make the change in the  
14 improvement.

15 (7) Loss of trees and shrubbery to the extent that they affect the value  
16 of the land taken, and to the extent that their loss impairs the value of  
17 the land remaining.

18 (8) Cost of new fences or loss of fences and the cost of replacing  
19 them with fences of like quality, to the extent that such loss affects the  
20 value of the property remaining.

21 (9) Destruction of a legal nonconforming use.

22 (10) Damage to property abutting on a right-of-way due to change of  
23 grade where accompanied by a taking of land.

24 (11) Proximity of new improvement to improvements remaining on  
25 condemnee's land.

26 (12) Loss of or damage to growing crops.

27 (13) That the property could be or had been adapted to a use which  
28 was profitably carried on.

29 (14) Cost of new drains or loss of drains and the cost of replacing  
30 them with drains of like quality, to the extent that such loss affects the  
31 value of the property remaining.

32 (15) Cost of new private roads or passageways or loss of private roads  
33 or passageways and the cost of replacing them with private roads or pas-  
34 sageways of like quality, to the extent that such loss affects the value of  
35 the property remaining.

36 (e) *Fair market value.* "Fair market value" means the amount in  
37 terms of money that a well informed buyer is justified in paying and a  
38 well informed seller is justified in accepting for property in an open and  
39 competitive market, assuming that the parties are acting without undue  
40 compulsion. The fair market value shall be determined by use of the  
41 comparable sales, cost or capitalization of income appraisal methods or  
42 any combination of such methods.

43 Sec. 2. K.S.A. [26-502] hereby repealed.

Sec. 2. K.S.A. 26-502 is hereby amended to read  
as follows: 26-502. A petition shall include  
~~allegations of:~~ (1) The authority for and the purpose  
of the taking; (2) a description of each lot, parcel  
or tract of land and the nature of the interest to be  
taken; (3) insofar as their interests are to be taken  
(a) the name of any owner and all lienholders of  
record, and (b) the name of any party in possession;  
and (4) a showing that all required local, state and  
federal permits to use or develop any such property  
have been obtained pursuant to section 1, and  
amendments thereto. Such petition shall be verified by  
affidavit. Upon the filing of such petition the court  
by order shall fix the time when the same will be  
taken up. No defect in form which does not impair  
substantial rights of the parties shall invalidate any  
proceeding.

Renumber remaining sections accordingly.

26-502 and  
are