

MINUTES OF THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman John Edmonds at 1:30 P.M. on March 20, 2006 in Room 313-S of the Capitol.

All members were present except:

Representative Melody McCray-Miller- excused

Committee staff present:

Athena Andaya, Kansas Legislative Research Department
Dennis Hodgins, Kansas Legislative Research Department
Mary Torrence, Revisor of Statutes Office
Carol Doel, Committee Secretary

Conferees:

Representative Deena Horst

Others attending:

See attached list

Chairman Edmonds opened the meeting for public hearing on **HB 2931** - eminent domain; plaintiff give notice to defendant to remove personal property prior to plaintiff taking possession.

Representative Deena Horst spoke to the committee supporting **HB 2931** which was drafted in an attempt to find a solution to a situation in which a member of the Salina business community was denied access to his personal property which was located in a business which had been the subject of eminent domain. (Attachment 1) Representative Horst also included a copy an e-mail sent by business owner, Ben Frick, of Salina who related his problems with the eminent domain situation. (Attachment 2) Also included, was a copy of suggestions to improve the eminent domain process. (Attachment 3)

Gelene Savage, a representative of the Kansas Department of Transportation, addressed the committee as neutral to **HB 2931**. Currently on federal aid projects the KDOT administers, they follow Federal Aid Relocation Systems Act which requires 90 days that they cannot touch property from first offer and they have to relegate the time when personal property has to be removed or 30 day after acquisition. KDOT follow s this procedure on all projects administered by KDOT. Their only concern with the bill is the conflicts that it might create between federal law and state law. (No Written Testimony)

No other person wished to speak to the bill, and Chairman Edmonds closed the public hearing on **HB 2931**.

The Chairman requested a motion to adopt to minutes from the meetings of March 9th, 13th, 14th, 15, and 16th.

Representative Siegfroid moved that the minutes of March 9th, 13th, 14th, 15th, and 16th be adopted as read. Representative Brunk seconded the motion. Minutes were adopted.

Chairman Edmonds opened the floor for introduction of bill and recognized Representative Burroughs who requested the introduction of a bill authorizing the Kansas Lottery Expanded Lottery Act. With no objections, this was accepted for introduction.

Attention was directed to **SB 421** - unlawful picketing or protest march at funeral or memorial service.

Representative Myers made a motion to strike lines 13, 14, and 15, page 2 of SB 421. Representative Siegfroid seconded the motion.

Representative Myers withdrew his motion.

Representative Myers made a new motion to leave the word "or" on line ten and strike lines 11 and 12, page 2 of SB 421. The motion was seconded by Representative Siegfroid. Motion carried.

Representative Wilk moved that on line 7, page 2 of SB 421 the word "feet" be replaced with the word

CONTINUATION SHEET

MINUTES OF THE House Federal and State Affairs Committee at 1:30 P.M. on March 20, 2006 in Room 313-S of the Capitol.

"yards." Representative Ruff seconded the motion. Motion adopted.

Representative Wilk moved that SB 421 be moved favorable for passage as amended. Representative Siegfried seconded the motion.

Representative Burrough made a substitute motion to SB 421 regarding not allowing an audible level that a person would find annoying, damaging to hearing, a public safety concern or render persons unable to carry on a verbal conversation under normal circumstances. Representative Wilk seconded the motion. Motion was withdrawn.

Returning to the motion by Representative Wilk that SB 421 be moved favorable for passage as amended. This was seconded by Representative Siegfried. Motion passed.

Chairman Edmonds recognized Representative Frank Miller who gave a briefing on **HCR 5025** - eminent domain; proposed constitutional amendment restricting government authority to take property. Representative Miller spoke on the differences between **HCR 5040** and **HCR 5025**. He related that **HCR 5040** does not actually define public use, and says very little about adequate compensation and it has an exception on line 25 that basically brings the whole question back to the legislature. He supports **HCR 5025** which does define public use and specifically addresses just compensation for a taking of property through eminent domain. (No Written Testimony)

Representative Brown made a motion to pass HCR 5025 favorable for passage. Representative Dahl seconded the motion. Motion passed.

The following Representatives wished to have their votes recorded.

Representative Anthony Brown	Aye	
Representative Lynne Oharah		Aye
Representative Don Myers	Aye	
Representative Everett Johnson	Aye	
Representative Don Dahl	Aye	
Representative Judy Morrison	Aye	
Representative Steve Brunk	Aye	

Chairman Edmonds directed attention to **HB 2792** - measures to protect minors seeking abortions; duties of court.

Representative Kelsey made a motion to delete lines 40-43, page 2 of HB 2792. Representative Myers seconded the motion. Motion passed. Bill amended.

Representative Kelsey moved that HB 2792 be moved as amended favorable for passage. Representative Brown seconded the motion.

Representative Mah made a substitute motion to remove lines 41 and 42, page 2 from HB 2792. Representative Cox seconded the motion. Motion failed.

Representative Kinzer offered an amendment to HB 2792 to add a new section 2, (o). (See Attachment 4). Representative Oharah seconded the motion. Motion adopted.

Representative Kinzer offered a second amendment to HB 2792 to add a new section (p). (See Attachment 5. Representative Oharah seconded the motion. Motion adopted.

Representative Oharah moved that HB 2792 be moved out favorable for passage as amended. Representative Kelsey seconded the motion. Motion passed.

With no further business before the committee, Chairman Edmonds adjourned the committee.

CONTINUATION SHEET

MINUTES OF THE House Federal and State Affairs Committee at 1:30 P.M. on March 20, 2006 in Room 313-S of the Capitol.

STATE OF KANSAS

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TOPEKA

HOUSE OF
REPRESENTATIVES

TESTIMONY ON
HB 2931

COMMITTEE ASSIGNMENTS
CHAIRPERSON: ARTS & CULTURAL RESOURCES
JOINT COMMITTEE
VICE-CHAIRPERSON: EDUCATION (K-12)
MEMBER: HIGHER EDUCATION
ECONOMIC DEVELOPMENT
LEGISLATIVE EDUCATION
PLANNING

Chairman Edmonds, Vice-Chairman Siegfried, Ranking Minority Member Burroughs and members of the Federal and State Affairs Committee, thank you for allowing me to appear before you this evening in support of HB 2931.

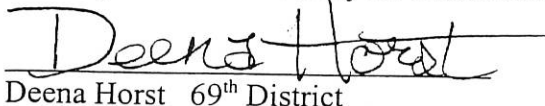
This bill was drafted in an attempt to find a solution to a situation in which a member of the Salina business community was denied access to his personal property which was located in a business which had been the subject of eminent domain. Mr. Frick was going to attend today, but he is ill so will be unable to attend so I have included e-mails which outline his angst with the process. Along with his complaints he has included suggestions for changes.

It is my understanding that the day the payment was made to the court, the City of Salina padlocked the building, claiming all of the personal property of the owner and of those business persons leasing space from him belonged to the city. No notice was given that the payment was to be made, and the individuals had no indication that they needed to remove their property by that day. [See attachment #1]

It is also my understanding that this situation continues to be a problem, because of several issues surrounding this eminent domain action. [These are outlined in an e-mail from Mr. Frick, the former owner of the land and building in question. He has made several suggestions for changes in other areas of the eminent domain law which you may want to take under advisement. (See attachment #2)] The specific suggestions he has made regarding this narrow component of eminent domain issues are found on page 2 of his e-mail...I have starred the portions of the email which seem to refer to the issue in the bill. In addition, his accountant has also e-mailed me with a number of documents outlining what is considered by the federal government to be personal property and what is considered real property. The accountant has suggested that these federal codes be used as the guide for distinguishing between real and personal property. [Those codes are: Real Property - 1250 & Personal Property - 1245.]

I would suggest that Mr. Frick's idea for the granting of a longer period of time than 3 days be favorably considered. I apologize to the leadership and to the membership of the committee. This bill was drafted when the revisors were under a lot of stress from moving and from our many requests so I didn't ask for a change although I believed the three days mentioned in the law to be too short of a time period.

Thank you in advance for your consideration of this narrow, but necessary change to the eminent domain law(s).


Deena Horst 69th District

FEDERAL AND STATE AFFAIRS
Date 3-15-06
Attachment 1

Attachment #1

From: "Horst, Gordon" <gordon@worldinc.net>
To: <"Undisclosed Recipients"@server2.saraney.com>
Date: 3/12/2006 9:44:27 PM
Subject: Hope this condensed version helps you. (fwd)

==== Forwarded message from "Ben Frick" <b8j8frick@hotmail.com> =====

\From: "Ben Frick" <b8j8frick@hotmail.com>
To: "Horst,
Gordon" <gordon@worldinc.net>
Subject: Hope this condensed version helps you.
Date: Sun, 12 Mar 2006 14:07:45 -0600

In our case, the city paid the court the condmenation purchase price for our real estate on this Friday afternoon.

Later that same Friday, the city sent the police to our corner to close down the Lounge and Clubs. They came in the dress shop the next day and informed the owner who was leasing the dress shop from us that all of his clothes and merchandise now belonged to the city. They ran off the customers he had in his shop and told them they could not take the clothes they purchased with them because they now belonged to the city. The police ran off all the vendors who had rented space in the flea market in the parking lot telling them that they could no longer be there because it now belonged to the city. They even claimed that the food in the restaurant now belonged to the city and tried to prevent food prepared for a catered wedding reception being held at a downtown hotel from being removed from the restaurant to be delivered to the wedding reception. The police tried to prevent a baby's high chair needed for the wedding reception from being taken out of the restaurant too.

This all happened on a Friday afternoon, Friday evening and Saturday morning. We couldn't get back into court to get something done about the personal property, trade fixtures, etc until Monday. There was a meeting held after that Monday identifying and agreeing to what was personal property, trade fixtures, etc., and what did not belong to the city. It was made up by the city, signed by the city manager and a month later, the city reneged on the whole agreement.

The city, through their police force, succeeded in running off all the business that the businesses had left.

==== End forwarded message =====

FEDERAL AND STATE AFFAIRS

Date 3-20-06

Attachment 2

Attachment #2



iManager v2.12.1

Virtual Server Administration Suite

Folder List

INBOX
Outgoing
Junk Mail

Other...

{INBOX} : Please give to Deena -- "Ben Frick" <b8j8frick@hotmail.com>



Current Mail Folder: {INBOX}

Message #: 203/203

Message Size: 30.6 kb

Address Book

[View Contacts](#)
[Add New Contacts](#)
[Import Contacts](#)

To: "Horst, Gordon" <gordon@worldlinc.net>
Date: Sun, 12 Mar 2006 12:32:44 -0600
From: "Ben Frick" <b8j8frick@hotmail.com>
Subject: Please give to Deena

Spam Filters

Spam Filters are Active

[View/Edit Spam Filters](#)

[Attachment #1]

Type: text/plain; Encoding: quoted-printable; Size: 11.0 KB

Some suggestions to improve eminent domain process, move, relocation, search, and reestablishment.

Autoresponder

Autoresponder is Off

[Edit Settings](#)

1.. After the original appraised value of the property is found not acceptable by the landowner, a judge appoints 3 supposedly neutral people to serve as appraisers to collectively agree on another value for the property.
Neither the purchasing agency or the landowner are supposed to have any input or comment in the selection of the 3 appraisers.

In our case one of those appointed to serve as one of the three appraisers was a real estate man who had tried to sell an RTC property to someone and was involved in aiding the theft of personal property contained in the property he was trying to sell. We were successful bidder and bought the property and were instrumental in his getting caught in the theft investigation. He was appointed to be one of our three appraisers and we weren't even allowed to tell anyone about our adversarial relationship, so he really got even with us for turning him in. Another one of the three appraisers was a former Saline County Appraiser and was employed by the appraisal firm that provided the original appraised value that we rejected. He was given the opportunity to make his employer's appraisal look more accurate by keeping the value the three appraisers arrived at lower than a non-biased person would have, and we were not allowed any input or comment in this persons appointment either.

The landowner and the purchasing agency should have equal opportunity to object, comment, or agree on the three persons proposed to be appointed.

My thoughts on this are, if they are taking someone's home, be sure that at least one and maybe more of the three people appointed to arrive at a fair purchase price be an actual homeowner. If they are taking a service station, make one of those appointed owning a service station or formerly owning a service station. The same goes for a clothing store, stockyard, restaurant, bar, tavern, etc. Some of those appoint should have some working knowledge of the business or residential area being taken.

FEDERAL AND STATE AFFAIRS

A while back, when the State was supposed to be fixing the open records laws, they excluded real estate appraisals that the county appraisers have from the open records rules except for licensed real estate brokers. In this case, the three people appointed to serve as appraisers for the eminent domain process, since to be fair should not be exclusively real estate professionals, can not obtain this very useful information to aid in the appraisal values they have to come up with. If this information was allowed to be obtained under the open records requests by even the original property owner, it may help them be more agreeable and satisfied with the price offered for their property if they could have some information to go on.

I really believe that if there is some consideration given to real experience, familiarity, or knowledge of the particular property and it's use and operation, a lot of the fear and distrust people have of the eminent domain process would be lessened.

★ 2.. The judge's instructions to the three people appointed to arrive at an appraised value of the property to be taken should be carefully instructed as to what is personal property, tools of the trade, trade fixtures, and business accessories, not to be confused with permanent real estate structure that an agency is taking. The personal property lists that the county appraiser has which include stoves, refrigerators, walk-in coolers, freezers, hoods, prop walls, mirrors, murals, etc., are useful in determining personal property. The IRS on personal property, tools of the trade, trade fixtures, etc for depreciation schedules and other tax records is a good guide to define what a particular business must retain to continue that business. Things like the feature walls that Guitierrez Restaurant had moved from their location on South Ohio Street to their new location at I-35 are a good example of what is considered personal property, tools of his trade, and accessories for his restaurant. This information is also very helpful in showing what personal property, accessories, tools of the trade, and trade fixtures that would be involved in moving and relocation and reestablishment of the particular business that is to be taken.

3.. The moving, relocation, and reestablishment process is as important and more complicated than the original condemnation process for the real property. The original relocation specialist hired to handle our relocation had a real physical presence in Salina and familiarized himself with our property, the businesses located there, and the operation of the 14 business entities located on our corner. He was physically available to explain the process to us and to allow us to ask questions and him make suggestions to help with the details of the businesses moving and setting up business in another location. He researched the county records, personal property lists, number of entities located at our property and told the purchasing agency that moving, relocation, reestablishment, etc for the 20,000 square foot building, 3 acres of paved parking, and 14 business entities involved could cost as much as 3 ½ times as much as the original purchase price of the real estate that was taken. The taking agency, in this case, the City of Salina, promptly fired him. The city replaced the qualified relocation specialist with an attorney in an office 180 miles away from Salina. He visited the site only once, and did not ever check the individual businesses for their wants and needs.

The federal regulations regarding relocation, if followed like they are supposed to be are reasonably fair and make pretty good sense. We might suggest the following:

- 1.. The relocation rules specify that the relocation agent be a qualified specialist in the relocation process.
- 2.. The relocation specialist is supposed to be readily available and have a physical presence in order to be able to extend a helping hand to help this process along. A sympathetic, understanding, readily available relocation agent can go a long way toward helping the displaced homeowner and displaced business person make the transition to a new location during this extremely stressful time.
- * 3.. A repair that is needed in this process is if it were possible that the minute the property is taken by the court or through the three appraisers, a true qualified relocation specialist should be hired and made available to the property owners and business owners soon to be displaced. They should not have to wait for the 30 days the purchasing entity is allowed to pay the purchase price into the court to start getting advice on what they are supposed to do looking for a new place to move.
- 4.. The qualified relocation specialist that is hired by the entity must be absolutely unbiased in order that the displaced businesspersons and displaced residents feel they can trust them. If the specialist supplies information to the purchasing agency, the same information must be supplied to the displaced business or resident. In order for this process to run smoothly, both sides must feel they can trust the qualified relocation specialist or everyone is wasting their time.
- * 5.. After the two required moving bids are furnished to the relocation specialist and the purchasing entity, the displaced business should be allowed more than 3 days to move. They should be allowed at least 10 days to move to a new location, or if no new location is available at this time, move to secure storage until a new location is made available.
- 6.. If an agency like a city takes a property and forces a business out, there should be something in the law that the purchasing agency has to come up with a like type site to move the business to that would allow them to stay in business on about the same level as they were before they were forced out. Like the Topeka bike shop and bar, some people questioned the purchase amounts that the businesses wanted for the purchase of the property. If they had gone into the eminent domain process, not only would the people who were pushing the project have to pay for the purchase of the property, but the moving, relocation, reestablishment, costs that could exceed the property purchase price by as much as 3 1/2 times under the federal standards. Maybe that is why they tried to go another way and relocate the bar for the owner themselves. Maybe it was a better deal to pay the bike shop owner more for the part of his property they took and let him stay right where he was than to fight over the price the owner wanted and still have to pay to relocate him. This sounds like a win, win action.

4.. We had to appeal our relocation process. The purchasing agency which in this case is the City of Salina, appointed the hearing officer who would hear out appeal. They appointed a former city manager who was also employed by the City of Salina as a deputy-city manager at the time he was hired to serve as the hearing officer for our appeal. According to the city, they were allowed to do that under the regulations and even though we questioned how an employee of the city could be unbiased in deciding how much his employer, the city, was going to have to pay us for our relocation. A part of any change should be that should a relocation process be appealed, that the hearing officer appointed to hear the appeal should be unbiased. He should not be a former city manager, present deputy city manager, employed by the city or in any way connected to the city or any other agency. It would be helpful if the hearing officer had a working knowledge of the type

of business for which he was judging the process of relocation so he would know what he is dealing with.

5.. We couldn't find anyone to answer our questions or listen to us when we tried to get someone's attention to do something about what the city was doing to us that was not following the rules, was unfair and we knew was wrong. We hesitate to advocate expanded government, but there should be some kind of agency whether it is connected with the governors office, the department of transportation, the highway department, or some place that can hear complaints from displaced property owners that the purchasing entity is not following the regulations. The displaced businesspersons need a sounding board to truly investigate what some government entities or agencies are doing to them. If some source of relief is not provided to hear the complaints, the words "eminent domain" will continue to be two of the most hated and feared words anyone who owns any property or a business dreads hearing.

Deena, If this information is not enough, and you need me to testify, please let me know the time and place and I will be there. I need to get in and out right away because of some pressing needs in Salina.
Best, Ben

>> [View text/html attachment separately](#) <<
>> [Save text/html attachment to server](#) <<

Printer Friendly Format

Current Mail Folder: {INBOX}
Message #: 203/203
Message Size: 30.6 kb

Actions: [Redirect Message](#)
[Forward Message](#)
[Reply to Message](#)
[Group Reply](#)
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[Delete Message](#)

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Balloon amendment HB 2792, Teen Protection Act

1) ~~Delete lines 40-44 on page 1, deleting the selection of stricter parental rules, depending on teen's residential state~~

2) Add new: section 2, (o) :

In the course of a judicial hearing to waive parental notice, if the court has reason to suspect that a minor has been injured as a result of physical, mental or emotional abuse or neglect or sexual abuse, the court shall report the matter promptly as provided in subsection c or e of K.S.A. 38-1522. In the course of reporting suspected child abuse or neglect to the appropriate state authorities, nothing in this section shall abridge or otherwise modify the anonymity or confidentiality provisions of the judicial waiver proceeding as specified in Sec. 2 c of this act.

Attachment 2

3) Add new: section 2 (p) :

Any person who performs an abortion on a minor, except in a medical emergency, without parental notice or knowledge, or without a court order shall be liable for the cost of any subsequent medical treatment such minor might require because of the abortion.

attachment 3

FEDERAL AND STATE AFFAIRS

Date 3-20-06

Attachment 4

~~FEDERAL AND STATE AFFAIRS~~
~~DATE~~
~~ATTACHMENT~~

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attachment 3

~~FEDERAL AND STATE AFFAIRS~~
~~Date 3-20-06~~
~~Attachment 4~~

FEDERAL AND STATE AFFAIRS

Date 3-20-06

Attachment 5