

MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairperson Nick Jordan at 8:00 A.M. on February 8, 2006 in Room 123-S of the Capitol.

All members were present.

Committee staff present:

Helen Pedigo, Revisor of Statutes
Jackie Lunn, Committee Secretary
Audrey Dunkel-Legislative Research

Conferees appearing before the committee:

Don Moler-Kansas League of Municipalities
Blake Schreck-Lenexa Chamber of Commerce
Bill Yanek-Kansas Association of Relators
Doug Kinsinger-Topeka Chamber of Commerce
Allie Devine-Kansas Livestock Association
Terry Holdren-Kansas Farm Bureau

Others attending:

See attached list.

Chairperson Jordan opened the meeting with the continuation of the hearing on **SB 360--Eminent domain; prohibition against tax incentive use**. Chairperson Jordan introduced Don Moler representing the Kansas League of Municipalities to give his testimony as an opponent to **SB 360**. Mr. Moler offered written testimony. (Attachment 1) Mr. Moler gave a brief review of his written testimony stating the League of Municipalities feels that the bill is simply a device to make any use of eminent domain for economic development purposes unattractive as a matter of public policy, and therefore; effectively end this practice in Kansas. In closing Mr. Moler stated **SB 360** clearly would have a chilling effect on the ability of cities and our citizens, to utilize this power for effective economic development projects. He urged the Committee to reject **SB 360**.

Upon the completion of Mr. Moler's testimony there was discussion with Mr. Moler regarding the Federal bills pending in the U.S. Senate regarding eminent domain. With no further questions or discussion, Chairperson Jordan closed the hearing on **SB 360**.

Chairperson Jordan opened the hearing on **SB 493--Economic development; eminent domain; procedure; compensation** by introducing Helen Pedigo from the Revisors office to give a review of the bill. Ms. Pedigo reviewed sections 1 through 6 of the bill. Following Ms. Pedigo's review there were several questions from Committee members regarding rental property and if the property owner was compensated for the loss in income also. The Committee was told there is wording in the bill which seems to cover this issue.

Upon the completion of Ms. Pedigo's review of the bill, Chairperson Jordan introduced Don Moler representing the Kansas League of Municipalities to testify as a proponent on **SB 493**. Mr. Moler presented written testimony (Attachment 2) Mr. Moler urged the Committee to pass the bill stating the Kansas League of Municipalities feels the bill strengthens private property rights and at the same time protects eminent domain for economic development purposes. He stated eminent domain for economic purposes is not something that happens very often.

Upon completion of Mr. Moler's testimony, Chairperson Jordan introduced Blake Schreck representing the Lenexa Chamber to give his testimony as a proponent of **SB 493**. Mr. Schreck presented written testimony. (Attachment 3) Mr Schreck stated the Lenexa Chamber was in support of **SB 493** which creates new process-based protections and limitations on the exercise of eminent domain for economic development purposes. They believe efforts to tighten the use of eminent domain should focus on the process as **SB 493** does rather than the type of property being impacted. Process based proposals like **SB 493** allow communities the flexibility to continue to judge potential opportunities on a case by case basis; leaving decisions as to the exercise of those powers primarily with locally-elected officials and their constituents who can best weigh the values, needs, desires and circumstances of their individual communities. In closing, Mr. Schreck urged

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MINUTES OF THE Senate Commerce Committee at 8:00 A.M. on February 8, 2006 in Room 123-S of the Capitol.

the Committee to support **SB 493**.

Upon completion of Mr. Schreck's testimony, Chairperson Jordan introduced Bill Yanek representing the Kansas Association of Relators to testify as a proponent on **SB 493**. Mr. Yanek offered written testimony. (Attachment 4) Mr. Yanek stated entities using eminent domain for economic development should be required to show the condemnation serves an important state interest and that the condemnation is at least substantially related to serving that interest. He stated now is not the time for Kansas to cede economic development opportunities to other states because of a ban on the use of eminent domain for economic development. In closing, he stated the Kansas Association of Relators look forward to working with the Kansas Legislature and eminent domain state holders in crafting legislation that will balance Kansas' need for economic development with protection of private property rights.

Chairperson Jordan introduced Doug Kinsinger representing the Greater Topeka Chamber of Commerce to give his testimony as a proponent of **SB 493**. Mr. Kinsinger presented written testimony (Attachment 5) Mr. Kinsinger cited several instances where eminent domain was needed as a last resort for economic development. He stated **SB 493** offers language requiring heightened standards for local governments' use of the power of eminent domain. The bill requires compensation above market value on sliding scale, the preparation of economic development plan and findings that the project benefits the entire community. It limits the scope and size of the project reasonable to accomplish the purpose intended. Additionally public hearings are required and a 2/3s majority vote of the governing body is required for approval of eminent domain use and the adoption of the project plan. The bill also requires the courts to determine the validity of the taking. The Greater Topeka Chamber believes these are reasonable additions to current eminent domain law that will provide property owners enhanced protection and fair financial compensation by recognizing the property owners length of ownership. In closing, Mr. Kinsinger asked the Committee to remain committed to Kansas economic growth and support **SB 493**.

Written only testimony as proponents of the bill were offered by: Michael A. Boehm, Mayor of Lenexa. (Attachment 6); Barbara Kasoff representing Women Impacting Public Policy (Attachment 7); Nancy Zurbuchen representing Kansas City Council of Women Business Owners (Attachment 8).

Chairperson Jordan announced to the Committee they would next hear from the opponents of **SB 493** and introduced Allie Devine with the Kansas Livestock Association to give her testimony as an opponent to the bill. Ms. Devine offered written testimony. (Attachment 9) Ms. Devine stated KLA has a long standing history of protecting private property interests. The issues of eminent domain are very complex and raise a number of legal, social, and economic issues and they believe reform is needed. In closing, she stated without the Constitutional protection or the removal of a legal presumption of validity of condemning authority actions, there is little substantive legal protection for the private property holder.

Chairperson Jordan introduced Terry Holdren with the Kansas Farm Bureau to give his testimony as a proponent of **SB 493**. Mr. Holdren offered written testimony (Attachment 10) Mr. Holdren stated **SB 493** offers additional procedural protections for landowners. While the requirements of a project plan, public hearing and 2/3 majority are important they are not the substantive changes in eminent domain law that his members, and many Americans have voiced overwhelming support for. Mr. Holdren stated in November 2005, American Farm Bureau Federation completed a public opinion poll of 1,076 likely voters. Respondents to that poll were asked to rank their support for government seizure of private property. 65% of the respondents supported condemnation for public use on roads, electrical utilities, or pipelines for natural gas. In the same question, 85% of the respondents opposed condemnation for private economic development such as a shopping mall, housing complex or office park, to increase property tax revenue. Their significant objection to the bill centers on the new Section 1 which creates a presumption that eminent domain used for economic development is an acceptable use of the power in Kansas. In closing, Mr. Holdren stated they were willing to work for common ground.

Upon completion of Mr. Holdren's testimony there was discussion with the Committee. Senator Emler discussed the survey and asked for detailed information which Mr. Holdren stated he would get to him. The discussion moved to Ms. Devine and language she was opposed to in **SB 493**. Senator Reitz joined the discussion and discussed the language "clear and convincing". Senator Schodorf asked why the bill was dual

CONTINUATION SHEET

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referred and what happens and why. Chairperson Jordan stated this bill was dual referred because there are legal questions as well as economic development questions. The Committee will deal with the economic side of the bill and Judiciary will deal with the legal side of the bill. If the Committee passes it out then it goes to Judiciary and the Chair would hope the legislation would be a result of both Committee's work. The discussion continued regarding the use of agricultural property for eminent domain; if farm land should be protected. Mr. Holdren and Ms. Devine were in agreement that the issue should be a property owners issue and not an urban renewal or farmland issue. The discussion continued with private property on the outskirts of the city limits. Mr. Kinsinger entered the discussion regarding the property around any property taken by eminent domain. Senator Brownlee asked if language needed to be added to clean up the bill to prevent public takings cutting a land owner's access to his land off. Chairperson Jordan stated bill should contain wording, that the Court would expedite the hearing so it doesn't stay in court for months and months.

With no further questions or discussion, Chairperson Jordan adjourned the meeting at 9:10 a.m. The next scheduled meeting is tomorrow, Thursday, February 9, 2006 at 8:00 a.m. in room 123S.



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League of Kansas Municipalities

To: Senate Commerce Committee
From: Don Moler, Executive Director
Re: Opposition to SB 360
Date: January 31, 2006

First I would like to thank the Committee for allowing the League to appear today in opposition to SB 360. The League appears today in opposition to SB 360 as we believe it is simply a device to make any use of eminent domain for economic development purposes unattractive as a matter of public policy, and therefore effectively end this practice in Kansas. As a bit of a background, the use of eminent domain for economic development purposes has been used very sparingly in Kansas, over the years, and in the few instances it has been used there have been very positive results. I have attached to my testimony today a copy of a League Legislative Briefing paper providing information on the six principal uses of this power in Kansas over the past 20 years.

While this bill does not ban the power, as do some of the other proposals which are currently being heard in the legislature, it would clearly have a chilling effect on the ability of cities, and our citizens, to utilize this power for effective economic development projects. I should also point out that the League has provided the legislature with what we believe to be a reasonable piece of legislation concerning the use of eminent domain for economic development purposes. SB 446, the Fairness in Economic Development Act, is being heard, along with a number of other pieces of legislation on this subject, in the Senate Judiciary Committee today and tomorrow. SB 446 strengthens the rights of private property owners while at the same time preserving the power of eminent domain for economic development purposes for the benefit of the public at large. We believe this balance is essential to helping maintain economic development in Kansas. As a result we would urge the Committee to reject SB 360. I would once again like to thank the Committee for allowing the League to testify today, and would be happy to answer any questions the Committee may have.

Senate Commerce Committee
February 8, 2006



League of Kansas Municipalities

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TO: Senate Commerce Committee
FROM: Don Moler, Executive Director
RE: Support for SB 493
DATE: February 8, 2006

I want to thank the Committee for allowing the League of Kansas Municipalities to appear today as a proponent of SB 493, a bill that strengthens the rights of private property owners when eminent domain is used for economic development. I first wish to direct the Committee's attention to the Legislative Briefing attachment to this testimony, wherein the League has summarized the six major eminent domain projects in Kansas. Eminent domain for economic development purposes has been used sparingly in Kansas, with a net effect of thousands and thousands of new jobs and hundreds of millions of dollars in new revenue to the State. These projects represent a state and local government partnership to promote economic development in Kansas, which has benefitted the state and its citizens.

There is no doubt that eminent domain is a powerful tool that should be used sparingly, with adequate protections for private property owners. To accomplish the balancing of the interests on both sides of the eminent domain debate, the League worked with cities from across the state to come up with an approach that provides greater protections for property owners, while still allowing for the use of the power. Those components are found in SB 446. SB 493 is very similar to SB 446 except for the compensation component. First, the bill provide an enhanced process beyond that required in traditional public improvement projects, such as roads and bridges, utilities and public facilities. It would require heightened compensation for residential and farm properties, in addition to any relocation costs currently required under existing state law. There would have to be a redevelopment plan that makes findings of the public necessity for the project, and would require public hearings on the plan. Any approval of such a plan and of the use of eminent domain in conjunction with the plan would require a $\frac{2}{3}$ vote of the governing body of the condemning authority. In addition, eminent domain could not be used unless the governing body made a finding that, despite good faith negotiations, the property was not able to be acquired through purchase. Finally, the bill adds another aspect of judicial review to allow the court to examine the government's decision to take the property by eminent domain. These are significant protections not in current law.

To conclude, SB 493 strengthens the rights of private property owners while at the same time preserving the power of eminent domain for economic development purposes for the benefit of

www.lkm.org

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Attachment 2-1

the public at large. We believe this balance is essential to helping maintain economic development in Kansas. Therefore, the League urges the Committee to adopt the approach found in SB 493 and reject any narrowing or prohibition of the authority of eminent domain. I would once again like to thank the Committee for allowing the League to testify today and would be happy to answer any questions the Committee may have.



Legislative Briefing

Eminent Domain

This briefing sheet was designed to answer some of the many questions that have been posed recently regarding the use of eminent domain authority for economic development purposes.

Legal Issues

- The *Kelo v. City of New London* case was NOT an expansion of government's authority to condemn property. In fact, the U.S. Supreme Court upheld a long line of precedent which says that economic development is a legitimate public use. In addition, the Court NARROWED the power to some degree by indicating that there must be a comprehensive plan for revitalization in place for the area where the use of eminent domain is proposed.
- It has always been, and it is still the case, that it is unconstitutional to take private property from one land owner and give it to another for a private use. There must always be a finding that there is a public use where there is a benefit to the public.

LKM Position

"Support legislation which continues to allow for the use of eminent domain for economic development purposes, and strengthens the process which balances private property interests and the welfare of the community at large."
2006 Statement of Municipal Policy

Components of Such Legislation Include:

- Increased level of compensation for landowners when the project is for economic development purposes;
- Judicial review of the project to determine whether there is a public use.

Major Uses of Eminent Domain in Kansas

Cities and counties in Kansas have used eminent domain for economic development purposes only in a few cases. Each time, it has been for a major project of local and statewide importance. The expansion in each of these areas represents growth in the thousands of percent and a significant increase in jobs and taxes generated.

The following is some basic information about six major projects in Kansas:

- Kansas Speedway and Village West Development in KCK.

Appraised Value Before Project	\$ 10,316,408
Amount Paid to Landowners	Multiple owners were paid 125% of value plus relocation costs.
Present Appraised Value	\$240,015,200
Difference	\$229,698,792
Percent Growth	2226%

Other Benefits include 4,000 new jobs, \$7 million in new property taxes, \$2.8 million in new state income tax. Before the project, the area generated a total of \$208,409 in property taxes annually. In 2005, the same land generated \$6.4 million in property taxes.

Eminent Domain (continued)

• **Baron BMW in Merriam.**

Appraised Value Before Project	\$1,425,960 (5 properties)
Amount Paid to Landowner	4 of the 5 properties were purchased outright by BMW. Only 1 had to be condemned and that landowner received \$1,000,000.
Present Appraised Value	\$7,640,160
Difference	\$6,214,200
Percent Growth	436%

The only property which had to be condemned had a long history of municipal code violations. It had a history of vacancy, interrupted by short-lived businesses. Still, that landowner received \$1,000,000 in the eminent domain proceeding.

• **Merriam Town Center.**

Appraised Value Before Project	\$ 3,804,180 (135 properties)
Amount Paid to Landowner	\$1.25 per square foot plus \$1,000 for every year the owner occupied the house. All but 8 landowners accepted the developer's offer.
Present Appraised Value	\$57,373,330
Difference	\$53,569,150
Percent Growth	1408%

Other benefits include an increase in jobs from 24 before the project to 862 after the project. Annual property taxes paid before the project were \$119,030. After the project, annual property taxes total \$1,405,374. Annual sales taxes generated in the area prior to the project were estimated at \$10,000. Currently, \$8,088,895 in sales taxes are generated annually in this area.

• **Target Distribution Center, Shawnee County.**

Appraised Value Before Project	\$ 243,970
Amount Paid to Landowner	\$ 329,000
Present Appraised Value	\$43,331,000
Difference	\$43,087,030
Percent Growth	17,661%

Other benefits include an increase from 0 to 620 jobs in year 1. Also, annual property taxes paid prior to project were \$7,779.66 and current property taxes collected in this area total \$1,402,103.95.

• **Home Depot, Pittsburg**

Appraised Value Before Project	\$ 361,890
Amount Paid to Landowner	\$1,032,000
Present Appraised Value	\$5,052,600
Difference	\$4,690,710
Percent Growth	1296%

Other benefits include an increase from 12 to 100 jobs. In addition, annual property taxes generated before the project were \$11,957 and are currently \$173,695.

• **Manhattan Town Center**

Appraised Value Before Project	\$10,754,592
Amount Paid to Landowner	80 parcels were needed, only 9 had to go to condemnation.
Appraised Value in 2003	\$46,805,832
Difference	\$36,051,240
Percent Growth	355%



The Historic Lackman-Thompson Estate

11180 Lackman Road
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Fax 913.888.3770

TO: Senator Karin Brownlee, Co-Chair
Senator Nick Jordan, Co-Chair
Members, Senate Commerce Committee

FROM: Ashley Sherard, Vice-President
Lenexa Chamber of Commerce

DATE: February 8, 2006

RE: **Support for SB 493 – Process-Based Protections and
Limitations on the Exercise of Eminent Domain for
Economic Development**

The Lenexa Chamber of Commerce would like to express its support for Senate Bill (SB) 493, which creates new process-based protections and limitations on the exercise of eminent domain for economic development purposes.

We strongly believe that in appropriate instances the use of eminent domain for economic development can indeed be clearly for the greater good. While most land acquisition is successfully negotiated, in a few instances cities have used eminent domain as a last resort to acquire property for an economic development project significant to their communities – those projects have been highly successful and the facts of those cases do not support claims that eminent domain use has been either widespread or abused.

Nevertheless, eminent domain cannot be taken lightly when used as a tool to acquire private property for economic development. As such, it is correct to consider whether new protections or limitations may be appropriate to achieve a reasonable balance. Much of what has been proposed, however, is too narrowly written and focuses primarily on limiting the type of property that can be impacted, creating a poor “one size fits all communities” solution.

We believe instead that efforts to tighten the use of eminent domain should focus on the process – as SB 493 does – rather than the type of property being impacted. Process-based proposals like SB 493 allow communities the flexibility to continue to judge potential opportunities on a case-by-case basis, leaving decisions as to the exercise of those powers primarily with locally-elected officials and their constituents who can best weigh the values, needs, desires, and circumstances of their individual communities.

For this reason, the Lenexa Chamber of Commerce urges the committee to support SB 493 as an appropriate process-based solution to this important issue. Thank you.

Senate Commerce Committee
February 8, 2006

Attachment 3-1



TO: SENATE COMMERCE COMMITTEE
FROM: BILL YANEK, KAR DIRECTOR OF GOVERNMENTAL RELATIONS
DATE: February 8, 2006
SUBJECT: Senate Bill 493

Thank you for the opportunity to testify. On behalf of the Kansas Association of REALTORS®, I appear today in support of Senate Bill 493. The Kansas Association of REALTORS® is a member of the Coalition for Kansas Job Growth.

Central to the 2006 KAR Legislative Agenda is to ensure that any legislative action impacting the use of eminent domain in Kansas balances private property rights with the need for economic development. KAR believes that the legislature should consider a heightened level of scrutiny when analyzing whether the government action is reasonable, including but not limited to whether the project has a positive regional economic impact.

KAR believes that statutory limitations on the use of eminent domain, such as those in SB 493, would buttress private property rights and reinforce the reasonable expectation of impacted property owners.

Entities using eminent domain for economic development should be required to show that the condemnation serves an important state interest and that the condemnation is at least substantially related to serving that interest. This would be in contrast to Kelo, where the Court applies a mere "rational basis" test, which determines whether there was only a rational basis for the reason the power was used. Helpful in defining an "important state interest" would be whether the proposed economic development project has a positive regional economic impact.

Now is not the time for Kansas to cede economic development opportunities to other states because of a ban on the use of eminent domain for economic development. Perhaps there will come a time when the United States Congress deals with eminent domain on a national level. However, until a national solution is achieved, Kansas job growth and economic development will be damaged if Kansas enacts a ban on the use of eminent domain for economic development.

The Kansas Association of REALTORS® looks forward to working with the Kansas Legislature and eminent domain stakeholders in crafting legislation that will balance Kansas' need for economic development with protection of private property rights.



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Senate Commerce Committee

February 8, 2006

W Attachment

4-1

Testimony: SB 493
Senate Commerce Committee
March 8, 2006
By: Doug Kinsinger, President & CEO
Greater Topeka Chamber of Commerce

120 SE 6th Avenue, Suite 110
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Senators Brownlee and Jordan, members of the committee, I am Doug Kinsinger, President of the Greater Topeka Chamber of Commerce; thank you for allowing me to speak today.

The Greater Topeka Chamber of Commerce would like to express our support for legislation that continues the ability of cities and counties to utilize eminent domain when needed as a last resort to better communities through economic development, SB 493 does just that. Eminent domain is a power that no one takes lightly; it is a tool of last resort.

In 2001, GO Topeka began a preliminary investigation of potential large sites suitable for a mixed use industrial commerce park. After much research, we began focusing on property located south of the city. In the spring of 2002, GO Topeka began optioning this property for the development of a new publicly owned commerce park. Due to an inquiry by a company looking to locate a large regional distribution center, timing of assembly of the commerce park became critical. Representatives of the company made it clear that if Topeka were to be considered for the project, the land had to be under control of one owner.

Purchase agreements were reached with the owners of 460 acres; except the owner of 3.8 acres. His parcels of land were critical to the location of the regional distribution center. Without these parcels secured, the distribution center would not locate their facility in Topeka/Shawnee County. The location decision for the facility was made by the company due to the level ground, saving construction costs of millions of dollars and valuable time, the ready utilities and as a result of the efforts of the local community partnering with the company to complete construction of the facility within the company's timeframe.

On the 3.8 acres was a metal building added by the owner for use by his construction company. The land had been purchased by the owner at an auction in December, 2000 for \$12,000. The metal building was added in October, 2001 and was valued at \$180,000. The parcel was zoned for industrial use.

The owner of the 3.8 acres initially was offered \$250,000 to purchase his building site and the 4000 sq. ft. building, and an additional \$50,000 for an adjoining 60,000 sq. ft. of land. There were counteroffers back and forth, including an offer to relocate the company to another site within the industrial park and infrastructure cost paid by the buyer in addition to a cash payment. Agreement was not reached; eminent domain proceedings were initiated. Prior to a decision from the Kansas Supreme Court, after both sides had presented their case, the property owner approached GO Topeka and asked for \$1.2 million settlement while awaiting the decision of the Court. The offer was declined.

The eminent domain proceedings were initiated by Shawnee County in March, 2002 after all efforts to negotiate a fair price had been exhausted. During the eminent domain process the panel of three appraisers agreed on a total value of \$329,000, which the owner ultimately was awarded. The owner appealed to the Kansas Supreme Court the legality of taking his property by the County. The Court upheld the County's authority to take the property for the public purpose of economic development.

The 1.4 million sq. ft. Target Distribution Center (the size of 25 football fields) was built on the 142 acre site. The project resulted in \$80+ million in capital investment and an initial 550 to 600 new jobs; over 9000 Kansans applied for those initial jobs. The first year of payroll was over \$17 million. Eventually the workforce will grow to 1000. There are approximately 500 inbound and outbound trucks utilizing the 238 docks at the center daily. These jobs were welcome news in Topeka/Shawnee County after suffering several job reductions in the early 2000's.

It is our strong belief that the decision to utilize eminent domain in securing the Target Distribution Center has benefited our community and the state of Kansas. If certain legislation proposed this year had been in effect a couple of years ago, there would not have been a Target Distribution Center in Topeka, Kansas, nor their new jobs.

In a time when we all are working to grow our Kansas economy to provide good quality jobs for Kansans, local government is an active partner with business to create jobs and income for Kansas citizens. Decisions regarding locating large companies are based upon many factors including the acquisition of an appropriate site and financial incentives that make the investment "pencil out" in our state vs. another. Additionally a quality workforce, appropriate infrastructure, and a "can do spirit" are critical. Eliminating the use of eminent domain will also squelch projects in areas of cities that are already challenged because of deterioration. If we are able to assemble all but one or a few hold-out properties in order to re-develop an area of the community that is strangled because of run-down properties, crime, and lack of quality infrastructure, and condemnation is not an option of last resort, then these depressed urban areas will remain as they are and drive more development and population to the fringes of our cities. Citizens will lose out to reclaiming blighted neighborhoods and commercial areas if they cannot utilize every tool to build anew. Both of these scenarios are about bettering our communities for the entire citizenry; this is the most important reason to retain the power of eminent domain in the state of Kansas. This is the only reason this power should be used.

SB 493 offers language requiring heightened standards for local governments' use of the power of eminent domain. The bill requires compensation above market value on a sliding scale (an innovative approach), the preparation of economic development plan and findings that the project benefits the entire community. It limits the scope and size of the project reasonable to accomplish the purpose intended. Additionally public hearings are required and a 2/3s majority vote of the governing body is required for approval of eminent domain use and the adoption of the project plan. The bill also requires the courts to determine the validity of the taking. We believe these are reasonable additions to current eminent domain law that will provide property owners enhanced protection and fair financial compensation by recognizing the property owners length of ownership.

We believe there are ways to craft legislation including protections for property owners where eminent domain remains a tool of last resort when projects are a public purpose of bettering the community. We ask that you remain committed to Kansas economic growth; we support SB 493.

Thank you.

Senate Commerce Committee
February 8, 2006

Attachment 5-1



TESTIMONY IN SUPPORT OF SENATE BILL NO. 493

To: Members of the Senate Commerce Committee

From: Michael A. Boehm, Mayor

Date: February 8, 2006

RE: Senate Bill 493 – Eminent Domain

Thank you for the opportunity to present testimony in support of Senate Bill No. 493.

The City of Lenexa has never used eminent domain for economic development purposes. Moreover, it is the policy of the City to first negotiate in good faith for the purchase of private property prior to the institution of eminent domain procedures for any purpose and as such, good faith negotiations would certainly precede any future use of eminent domain for economic development. The City supports the enactment of procedural safeguards to ensure that any use of eminent domain for economic development is not taken lightly, but rather after careful and deliberate consideration of the benefit to the community at large. The City opposes any legislation which would completely or effectively abolish this important tool.

SB 493 provides a fair and balanced approach, which preserves the ability of condemning authorities to utilize eminent domain for economic development, but only after the governing body has conducted a public hearing on the proposed project and thereby provided a full opportunity for public input into the proposal. In addition, the governing body must consider the benefit to the community as a whole; the economic benefit of the proposal and whether the size and scope of the project is reasonably necessary to accomplish the purpose. The bill also provides enhanced compensation for property owners whose property is taken for economic development, which enables the owner to share in the economic benefit that the project will bring to the community.

The economic strength of our state depends upon the ability of state and local officials to retain numerous methods for securing solid development. SB 493 recognizes the importance of economic development to the state, while ensuring that the use of eminent domain for this purpose is undertaken only when the benefits of the proposed development project justify such use.

The City of Lenexa urges your support of SB 493. Please do not hesitate to contact me (913/477-7550 or mboehm@ci.lenexa.ks.us) or Senior Assistant City Attorney Beccy Yocham (913/477-7628 or byocham@ci.lenexa.ks.us) should you desire any additional information or assistance on this matter. Thank you for your consideration.

Barbara Kasoff
Cofounder, Vice President and COO

Coalition Partners

- American Women in Radio and Television
- Association for Women in Communications
- Association of Women's Business Centers
 - Black Women Enterprises
 - Boardroom Bound
 - Business Women's Network
 - Enterprising Women
- Euro-American Women's Council
Europe - Greece
- Financial Women International
- Hispanics Impacting Public Policy
- Kansas City Council of Women Business Owners
- National Associations for Female Executives
- National Association of Small Disadvantaged Businesses
- National Association of Women Business Owners
 - National Business Association
 - National Indian Business Association
 - National Defense Industrial Association
 - National Women Business Owners Corporation
- Native American Women's Business Council
- New Jersey Association of Women Business Owners
- San Francisco Small Business Network
- Small Business & Entrepreneurship Council
 - Small Business Television Network
 - UNIFEM / USA
- Women Construction Owners & Executives
 - Women Entrepreneurs, Inc.
 - Women Impacting Public Policy Florida
 - Women Impacting Public Policy Pennsylvania
- Women in Technology International
- Women Presidents' Organization
- Women's Business Enterprise National Council
- Women's Leadership Exchange
 - WorldWIT



January 30, 2006

Dear Senator Brownlee and members of the Senate Commerce Committee,

This letter is in support of SB449 in Kansas. Women Impacting Public Policy (WIPP) is supportive of legislation that encourages competition in the video technology market. Kansas now faces a choice of whether to take a positive step forward that will increase competition in the television and broadband delivery market, or to retain outmoded laws that limit competitive progress.

WIPP is the nation's largest bi-partisan public policy organization comprised of women business owners. According to our surveys, cost and access to technology are increasingly important to business owners. Further, we found that 63% of our members support lessening telecommunications regulation if it will increase the availability of new technology and widen consumer choice.

As a National Partner with WIPP and a Kansas small business owner for over 15 years, I not only represent WIPP's support, but also my own personal support for SB449. Through this legislation, government can strengthen small businesses, especially those owned by women and minorities. In short, all consumers of broadband and television will ultimately benefit from increased competition.

Sincerely,

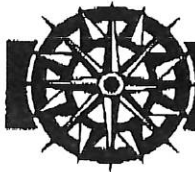
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Senate Commerce Committee

February 8, 2006

Attachment 7-1

**KC-CWBO****Kansas City Council of Women Business Owners**

**A Letter of Support
Regarding Policy to Facilitate Fair and Increased Video Competition**

February 3, 2006

Senator Brownlee and Members of the Senate Commerce Committee:

The Kansas City Council of Women Business Owners (KC-CWBO) is very interested in policy that affects our members, and by extension, all small business owners in the state of Kansas. Specifically, we are supportive of Senate Bill 449 which will spur video competition for Kansans. There are two primary reasons for our support:

First, we believe that it is imperative for laws to promote competitive alternatives for customers in the field of technology. The fact that technology is changing very rapidly cannot be an excuse for the public living with a policy that does not encourage multiple providers in the marketplace. Our legislators should act in a timely manner on policy issues involving technology, specifically video, wireless and broadband communications.

Second, we also believe that public policy either facilitates competition or hinders it. The current situation in Kansas leaves its residents with less choice because current laws ensure less competition in the marketplace. This is bad for consumers and unhealthy for Kansas small businesses.

Therefore, we strongly encourage the Kansas State Legislature to allow greater competition for communications services (voice, video, data) by eliminating barriers created by outdated laws. We support policy that updates and renovates communications laws.

Sincerely,

Nancy Zurbuchen

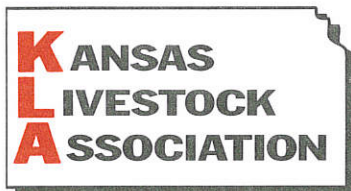
Co-founder and Executive Director, Kansas City Council of Women Business Owners
(KC-CWBO has members living and working on both sides of the state line in the KC metro area.)

President, Motional Multimedia
209 N.W. 44th Street, Kansas City, MO 64116
816-452-4700

Senate Commerce Committee

February 8, 2006

Attachment 8-1



Since 1894

TESTIMONY

To: Senate Commerce Committee
Senator Karin Brownlee, Chair

From: Allie Devine, Vice President and General Counsel

Date: February 8, 2006

Re: SB 493-opposition

The Kansas Livestock Association (KLA), formed in 1894, is a trade association representing over 6,000 members on legislative and regulatory issues. KLA members are involved in many aspects of the livestock industry, including seed stock, cow-calf and stocker production, cattle feeding, grazing land management and diversified farming operations.

KLA has a long standing history of protecting private property interests. We have appeared before the Judiciary committee on several occasions to support legislation to limit the use of eminent domain. Most recently, we appeared on behalf of our members in Cowley County who lived under the proposed threat of the use of eminent domain for the creation of a recreational lake. We are willing to provide a historical background of the Cowley County issues if the committee wishes.

The issues of eminent domain are very complex and raise a number of legal, social, and economic issues. Reform is needed and requested by the people. In a recent survey 89% of those surveyed opposed the use of eminent domain for economic redevelopment (see *The Public Use Clause: Constitutional Mandate or "Hortatory Fluff"*, 33 *Pepp. L. Rev.* 335, January 2006). Even Justice Stevens, the author of the famed *Kelo v. City of New London*, 125 S.Ct. 2655 (2005) stated that the outcomes were "unwise" but "in each I was convinced that the law compelled a result that I would have opposed if I were a legislator." (See *Justice Weighs Desire v. Duty (Duty Prevails)* N.Y Times, Aug. 25, 2005)

The issues today focus on the use of eminent domain for economic development purposes. The Committee is being asked to define in Kansas what will be the permissible uses of eminent domain for economic development. These issues may best be broken into areas which will also assist in the understanding of the numerous bills under consideration by the Senate.

Senate Commerce Committee

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Attachment 9-1

Three key questions are posed by this issue:

1. Does the legislature have the authority to restrict the use of eminent domain?

In Kansas that answer is yes, under the Kansas Supreme Court ruling in *Concerned Citizens, United, INC v. Kansas Power and Light Company*, 215 Kan. 218, 523 P.2d. 755 (1974). The Kansas Supreme court held that the legislature may act to define what is or is not an appropriate use of eminent domain. There is no Constitutional grant of authority for cities or counties to use eminent domain. The power is granted by the legislature and may be restricted by the legislature.

Most of the national debate centers on the meaning of *Kelo*. Numerous articles have been written about the meaning of the *Kelo* decision. (To understand the evolution of the U.S. Supreme Court rulings on the use of eminent domain and private property rights see "*Poor Relation Once More: The Supreme Court and the Vanishing Rights of Property Owners*" 2005 *Cato Sup. Cr. Rev.* 39.) (Hereinafter *Poor Relation*) While the *Kelo* decision upheld the taking of property from one private party and transferring it to another, the Court explicitly held that state governments were free to limit the scope of eminent domain. The majority opinion written by Justice Stevens said, "nothing in our opinion precludes any state from placing further restrictions on its exercise of the takings power."

Clearly, these two provisions provide that the legislature has the authority to act. Without legislative action, under current case law, there is little judicial review of the authority of condemning entities actions. In short, whatever the condemning authority wishes to pursue is presumed to be within its authority. This is the substantive principle that needs reform.

2. What limitations on the authority of eminent domain should the legislature enact?

SCR 1616, SCR 1612, and SB 323 address the issue of the fundamental authority for governmental units to use the power of eminent domain for economic development. These bills get to the substantive legal issue of authority. SCR 1616 is the most restrictive with a ban on the use of eminent domain for economic development purposes. SCR 1612 limits the use of eminent domain to certain types of property under specific circumstances. SB 323 further refines the restrictions of SCR 1612. We support substantive restrictions of authority of governmental entities to use eminent domain for economic development. We are seeking reforms that make it clear in the law that the use of eminent domain for economic development purposes is the exception and not the norm.

SB 493 lines 14-17 adopt a presumption that the taking of private property from one entity and transferring it to another entity is for economic development and infers a valid public purpose. The language makes the taking of private property and the transferring to another the norm and not the exception. The bill language establishes a legal

presumption that a condemning entity's actions are always Constitutional. This type of legal presumption is difficult if not impossible to overcome by a challenger. It is this presumption that we do not support.

3. If the legislature allows for the use of eminent domain for economic development, what procedural safeguards should be adopted?

SB 493 sets forth procedural requirements for certain types of takings and provides compensation provisions. SB 323 and SB 446 also provide a number of procedural safeguards that we have supported. We support these types of procedural safeguards in addition to Constitutional restrictions of authority. Without the Constitutional protection or the removal of a legal presumption of validity of condemning authority actions, there is little substantive legal protection for the private property holder.

PUBLIC POLICY STATEMENT

SENATE COMMITTEE ON COMMERCE

RE: Eminent Domain

February 8, 2006

Testimony Provided by:
Terry D. Holdren
KFB Governmental Relations

Chairperson Brownlee, and members of the Senate Committee on Commerce, thank you for the opportunity to appear today to convey the position of our membership regarding the power of eminent domain and SB 493. I am Terry Holdren and I serve as Local Policy Director for Governmental Relations at Kansas Farm Bureau. As you know KFB is the state's largest general farm organization representing more than 40,000 farm and ranch families through our 105 county Farm Bureau Associations.

SB 493 offers additional procedural protections for landowners. While the requirements of a project plan, public hearing and 2/3 majority are important they are not the substantive changes in eminent domain law that our members, and many Americans have voiced overwhelming support for. Thus, we must oppose the bill.

Our significant objection to the bill centers on New Section 1 which creates a presumption that eminent domain used for economic development is an acceptable use of the power in Kansas. Kansas Courts have agreed with this unacceptable position in two recent cases where they approved the use of eminent domain for economic development activity¹. In all cases, Courts have left to the Legislature the authority to clarify the law relating to this presumption.

¹ See: State ex rel. Tomasic v. Unified Government of Wyandotte County/Kansas City, 265 Kan 779 (1998) and General Building Contractors, LLC V. Board of Shawnee County Commissioners, 275 Kan 525 (2003).

Senate Commerce Committee
February 8, 2006

Attachment 10-1

Our objective in this debate is to create the opposite presumption—that the policy position of the state of Kansas presumes that the use of eminent domain for economic development is unacceptable.

In November 2005, American Farm Bureau Federation completed a public opinion poll of 1,076 likely voters². Respondents to that poll were asked to rank their support for government seizure of private property. 65% of respondents supported condemnation for “public use, such as building roads, electrical utilities, or pipelines for natural gas.” In the same question, 85% of respondents opposed condemnation for “private economic development, such as a shopping mall, housing complex or office park, to increase property tax revenue.”

In the same survey, respondents were asked for their level of agreement with the recent decision of the US Supreme Court in *Kelo v. City of New London* which allowed a city to condemn private property for private development. Overwhelmingly, 95% of respondents disagreed with the ruling.

We are also intrigued by the bills scale for compensation based upon the length of ownership. Our policy, adopted at the grass-roots level supports increasing compensation for landowners condemned for economic development activity because of the likely increase in value due to the development of the property.

Thank you, once again, for the opportunity to appear today and share the views of our membership developed after discussion and input from each of the state’s 105 counties. We look forward to working with you and the entire Legislature to create meaningful protections for Kansas property owners.

²John Zogby, President and CEO, Zogby International, Views of Likely Voters on Eminent Domain and Farm Subsidies, November 2005.