

## MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:37 A.M. on March 14, 2006, in Room 123-S of the Capitol.

All members were present except:

Phil Journey- excused  
Barbara Allen arrived, 9:40 a.m.  
Les Donovan arrived, 9:43 a.m.  
Kay O'Connor arrived, 9:45 a.m.  
David Haley arrived, 9:53 a.m.

Committee staff present:

Mike Heim, Kansas Legislative Research Department  
Helen Pedigo, Office of Revisor of Statutes  
Karen Clowers, Committee Secretary

Others attending:

See attached list.

The Chairman indicated there were three bills and two Senate Concurrent resolutions regarding eminent domain on the agenda. He distributed a draft of a proposed substitute bill constructed by the numerous interested parties including the Kansas Farm Bureau, the Kansas Livestock Association, The Kansas League of Municipalities, and a coalition of several Chambers of Commerce, as well as several interested individuals (Attachment 1). The Chairman explained the current version has few technical changes from the draft distributed at the previous meeting and proposed **SB 323** be used as a vehicle for the draft. The revisor reviewed the bill for the committee, discussion followed.

Senator Schmidt moved, Senator Goodwin seconded, to amend **SB 323** by creating a **Substitute for SB 323** and inserting the provisions of the proposed substitute bill including the deletion of the word "owner-occupied" on page 3. Motion carried.

Senator Schmidt moved, Senator Umbarger seconded, to recommend **Substitute for Senate Bill 323** favorably for passage. Motion carried.

Senator Umbarger moved, Senator Allen seconded, to table **SB 446, SB 493, SCR 1612** and **SCR 1616**. Motion failed.

Senator O'Connor moved, Senator Donovan seconded, to table **SB 446** and **SB 493**. Motion carried.

The Chairman called for final action on **HB 2701--Definition of drug paraphernalia**. Discussion followed. Senator Schmidt moved, Senator Donovan seconded, to table **HB 2701**. Motion carried.

The Chairman called for final action on **HB 2414--Penalties for battery against a law enforcement officer and aggravated battery against a law enforcement officer**.

Senator Goodwin moved, Senator O'Connor seconded, to recommend **HB 2414** favorably for passage.

Discussion followed indicating the bill contained contradictory language and disproportionality in sentencing. The motion was withdrawn.

Senator Haley moved, Senator Bruce seconded, to table **HB 2414**. Motion carried.

The meeting was adjourned at 10:30 a.m. The next scheduled meeting is March 15, 2006.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3/14/06

NAME	REPRESENTING
Heather Morgan	SSA
Carol Suttick	
Fred Luck	KHA
Natalie Gibson	KSC
Patricia Biggs	KSC
Brenda Harman	KSC
Bill Thompson	KS Dept. of Commerce
Christy Caldwell	Topeka Chamber of Comm
DICK CARTON	City of Manhattan
Erik Sartorius	City of Overland Park
Ashley Sheppard	Lenexa Chamber
Wes Ashton	Overland Park Chamber
Lane Wals	OJA
Lindsey Douglas	Hein Law Firm
Tim Madden	KDOC
Alie Devine	KLA
TERRY HADREN	KFB
Frank Henderson	KS Atty Gen - CIVCS

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3/14/06

NAME	REPRESENTING
Nikki Rieck	Laches Braden
Judy Jacquot	LKM
Diane Costello	Olate Chamber
Diane Albert	KOR
Carmen Albrecht	KOR
Marcy Burt	KOR
Sally Howard	KOR
Pete Bodyk	KDOT
Eric Stafford	AGC of KS.
Dan Mearns	Public Solutions
Erin Jones	Bo Dain
Heather Bennett	LLH
Meredith Timmons	Leavenworth Lansing Leadership Class
DAVE ZOELLNER	LEAVENWORTH - LANSING - LEADERSHIP

Draft  
3-13-06  
4:00AM

By

AN ACT concerning eminent domain; relating to restriction of government authority to take property; amending K.S.A. 26-501 and 26-513 and K.S.A. 2005 Supp. 12-1773, 19-101a and 26-504 and repealing the existing sections.

WHEREAS, The Kansas and United States Supreme Courts have ruled that the taking and transferring of private property from one private party to another is a valid use of the power of eminent domain; and

WHEREAS, the people of Kansas support the protection of private property rights and seek to heighten the protection of private property rights from the level expressed by recent court rulings; and

WHEREAS, the people of Kansas agree that the use of eminent domain for the taking and transferring of private property from one private party to another should only be allowed in extraordinary and limited situations and with explicit procedural safeguards: Now therefore,

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

New Section 1. (a) Private property shall not be taken by eminent domain except for public use and private property shall not be taken without just compensation.

(b) The taking of private property by eminent domain for the purpose of selling, leasing or otherwise transferring such property to any private entity is prohibited except as provided in sections 2 through 5, and amendments thereto.

New Sec. 2. The taking of private property by eminent domain for the purpose of selling, leasing, or otherwise transferring such property to any private entity is authorized and not subject to the provisions of sections 3 or 5 or subsections (b)(2) and (c)(2) of K.S.A. 26-513, and amendments thereto, if the taking is:

(a) By the Kansas department of transportation or a municipality and the property is deemed excess real property that

was taken lawfully and incidental to the acquisition of right-of-way for a public road, bridge or public improvement project including, but not limited to a public building, park recreation facility, water supply project, wastewater and waste disposal project, storm water project and flood control and drainage project;

(b) by any privately-owned common carrier, but only to the extent such property is used for the operation of facilities necessary for the provision of services by such privately-owned common carrier;

(c) by any municipality when the private property owner has acquiesced in writing to the taking;

(d) by any municipality for the purpose of acquiring property which has defective or unusual conditions of title including, but not limited to, clouded or defective title or unknown ownership interests in the property;

(e) by any municipality for the purpose of acquiring property which is unsafe for occupation by humans under the building codes of the jurisdiction where the structure is situated;

(f) expressly authorized by the legislature on or after July 1, 2006, by enactment of law that identifies the specific tract or tracts to be taken.

New Sec. 3. The taking of private property by eminent domain for the purpose of selling, leasing, or otherwise transferring such property to any private entity by a municipality is authorized, subject to the provisions of K.S.A. 26-513, and amendments thereto, but is not subject to the provisions of section 5, and amendments thereto, if:

(a) Such property is situated within a blighted area pursuant to K.S.A. 12-1770a, and amendments thereto, except that agricultural land, feedlots, public livestock markets or property located outside city limits shall not be deemed a "blighted area"; or

(b) a significant portion of such property, other than

owner-occupied single family residential property, has been vacant for at least 50% of the preceding five calendar years, the tract is less than three acres, and the tract is not part of a tax increment financing project.

New Sec. 4. (a) The taking of private property, by eminent domain for the purpose of selling, leasing, or otherwise transferring such property to any private entity by a city is prohibited if such property is a feedlot or a public livestock market and such property is located within the corporate boundaries of a city.

(b) The taking of private property by eminent domain for the purpose of selling, leasing, or otherwise transferring such property to any private entity by a county is prohibited if such property is agricultural land, as defined in section 7, and amendments thereto.

New Sec. 5. (a) The taking of private property by eminent domain for the purpose of selling, leasing or otherwise transferring such property to any private entity by a municipality is authorized if the following conditions are satisfied:

(1) The municipality demonstrates that no reasonable and prudent alternative to such taking is available to satisfy the public purpose that the taking and transfer is intended to advance; and:

(2) The municipality has prepared an economic development project plan pursuant to subsection (b).

(b) For any proposed project undertaken pursuant to subsection (a) for which property is anticipated to be acquired by eminent domain, the municipality shall prepare an economic development project plan. The economic development project plan shall contain supporting documentation and findings that the proposed project:

(1) Is within the corporate boundaries of the municipality and will benefit the municipality as a whole;

(2) will provide significant job growth; and

(3) will result in new capital investment in the municipality that is either greater than 1% of the municipality's total assessed valuation of taxable real property or \$10,000,000.

(c) No economic development project plan shall be approved unless a public hearing has been conducted concerning the proposed project plan. The governing body of the condemning authority shall adopt a resolution fixing the date for the public hearing. The date fixed for the public hearing shall be not less than 30 nor more than 70 days following the date of the adoption of the resolution fixing the date of the hearing. Copies of the resolution shall be sent by certified mail, return receipt requested, to each owner and occupant of land within the proposed economic development project area, whose address is known or can, with reasonable diligence, be ascertained, not more than 10 days following the date of the adoption of the resolution. The resolution shall be published once in a newspaper generally circulated in the proposed project plan area. If no newspapers are circulated in the proposed project plan area, then the resolution shall be published once in a newspaper generally circulated in the county where the lands are situated. The resolution shall be published not less than one week and not more than two weeks preceding the date fixed for the public hearing. A sketch clearly delineating the proposed project plan area in sufficient detail to advise the reader of the particular land proposed to be included within the proposed economic development project area shall be published with the resolution. No defect in any notice nor in any service thereof shall invalidate any proceeding. Following the public hearing, a 2/3 majority vote of the members-elect of the municipality is required to adopt the economic development project plan.

(d) After approval of the economic development project plan, a 2/3 majority vote of the members-elect of the governing body of the municipality is required to authorize the use of eminent domain to acquire land for the project. The municipality shall prepare a detailed report establishing that the municipality,

after good-faith negotiations with the property owner, was unable to acquire the property.

(e) The taking of private property by eminent domain for the purpose of selling, leasing or otherwise transferring such property to any private entity, pursuant to this section, is subject to the provisions of K.S.A. 26-501, 26-504 and 26-513, and amendments thereto, unless otherwise provided in this act.

New Sec. 6. The provisions of this act shall not apply to the exercise of eminent domain, pursuant to the provisions of K.S.A. 12-1773, and amendments thereto, within a redevelopment district created pursuant to K.S.A. 12-1771, and amendments thereto, if such redevelopment district was created prior to the effective date of this act.

New Sec. 7. (a) "Agricultural land" means any interest in real property that is privately owned and satisfies any one of the following criteria:

(1) Is classified pursuant to article 11, section 1 of the Kansas constitution as devoted to agricultural use;

(2) is a feedlot, confined feeding facility, or public livestock market;

(3) is a farm home; or

(4) is a grain handling facility, grain warehouse, or a farm implement retailer.

(b) "Confined feeding facility" means any lot, pen, pool or pond: (a) Which is used for the confined feeding of animals or fowl for food, fur or pleasure purposes; (b) which is not normally used for raising crops; and (c) in which no vegetation intended for animal food is growing.

(c) "Corporate boundary" means the jurisdictional boundary of the municipality, specifically the city limits or county line, and does not include an urban growth area or area designated by a planning or zoning commission in accordance with K.S.A. 12-754, and amendments thereto.

(d) "Fair market value" means the amount, in terms of money, that a well informed buyer is justified in paying and a well



informed seller is justified in accepting for property in an open and competitive market, assuming that the parties are acting without undue compulsion. Fair market value shall be determined by use of the comparable sales, cost or capitalization of income appraisal methods or any combination of such methods.

(e) "Farm home" means any tract of land which contains a single-family residence, is adjacent to agricultural land and is occupied by an individual or individuals engaged in farming operations.

(f) "Farming" means the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit, sod, or other horticultural crops, grazing or the production of livestock.

(g) "Feedlot" means a lot, yard, corral, confined feeding facility or other area in which livestock are fed for slaughter and are confined and such additional acreage as is necessary for the operation of the feedlot.

(h) "Livestock" means cattle, sheep, swine, horses, mules, asses, goats, aquatic animals, domesticated deer, all creatures of the ratite family that are not indigenous to this state, including, but not limited to ostriches, emus and rheas, and any other animal which can or may be used in and for the preparation of meat or meat products.

(i) "Municipality" means city, county or unified government.

(j) "Privately owned common carrier" means a commercial enterprise that holds itself out to the public as offering to transport products, freight, persons, information, or other such services for a fee. This term shall include electric transmission lines, pipelines, railroads, data transmission lines and communication towers.

(k) "Public livestock market" means any place, establishment or facility commonly known as a "livestock market", "livestock auction market", "sale ring", "stockyard" or "community sale" which includes any business conducted or operated for

compensation or profit as a public market for livestock, consisting of pens, or other enclosures and their appurtenances, in which livestock are received, held, sold or kept for sale or shipment.

(1) "Taking" means the use by any authorized entity of the power of eminent domain to acquire any interest in private real property.

Sec. 8. K.S.A. 2005 Supp. 12-1773 is hereby amended to read as follows: 12-1773. (a) Any city which has adopted a redevelopment project plan in accordance with the provisions of this act may purchase or otherwise acquire real property in connection with such project plan. Upon a 2/3 vote of the members of the governing body thereof a city may acquire by condemnation any interest in real property, including a fee simple title thereto, which it deems necessary for or in connection with any project plan of an area located within the redevelopment district. Prior to the exercise of such eminent domain power, the city shall offer to the owner of any property which will be subject to condemnation with respect to any redevelopment project, other than one which includes an auto race track facility or a special bond project, compensation in an amount equal to the highest appraised valuation amount determined for property tax purposes by the county appraiser for any of the three most recent years next preceding the year of condemnation, except that, if in the year next preceding the year of condemnation any such property had been damaged or destroyed by fire, flood, tornado, lightning, explosion or other catastrophic event, the amount offered should be equal to the appraised valuation of the property which would have been determined taking into account such damage or destruction unless such property has been restored, renovated or otherwise improved. However no city shall exercise such eminent domain power to acquire real property in a conservation area. Any such city may exercise the power of eminent domain in the manner provided by K.S.A. 26-501 et seq., and amendments thereto. In addition to the compensation or damage

amount finally awarded thereunder with respect to any property subject to proceedings thereunder as a result of the construction of an auto race track facility or a special bond project, such city shall provide for the payment of an amount equal to 25% of such compensation or damage amount. In addition to any compensation or damages allowed under the eminent domain procedure act, such city shall also provide for the payment of relocation assistance as provided in K.S.A. 12-1777, and amendments thereto.

(b) Any property acquired by a city under the provisions of this act may be sold, transferred or leased to a developer, in accordance with the redevelopment project plan and under such other conditions as may be agreed upon.

(c) The provisions of this section shall not apply to redevelopment districts created on or after July 1, 2006.

Sec. 9. K.S.A. 2005 Supp. 19-101a is hereby amended to read as follows: 19-101a. (a) The board of county commissioners may transact all county business and perform all powers of local legislation and administration it deems appropriate, subject only to the following limitations, restrictions or prohibitions:

(1) Counties shall be subject to all acts of the legislature which apply uniformly to all counties.

(2) Counties may not consolidate or alter county boundaries.

(3) Counties may not affect the courts located therein.

(4) Counties shall be subject to acts of the legislature prescribing limits of indebtedness.

(5) In the exercise of powers of local legislation and administration authorized under provisions of this section, the home rule power conferred on cities to determine their local affairs and government shall not be superseded or impaired without the consent of the governing body of each city within a county which may be affected.

(6) Counties may not legislate on social welfare administered under state law enacted pursuant to or in conformity with public law No. 271--74th congress, or amendments thereof.

(7) Counties shall be subject to all acts of the legislature concerning elections, election commissioners and officers and their duties as such officers and the election of county officers.

(8) Counties shall be subject to the limitations and prohibitions imposed under K.S.A. 12-187 to 12-195, inclusive, and amendments thereto, prescribing limitations upon the levy of retailers' sales taxes by counties.

(9) Counties may not exempt from or effect changes in statutes made nonuniform in application solely by reason of authorizing exceptions for counties having adopted a charter for county government.

(10) No county may levy ad valorem taxes under the authority of this section upon real property located within any redevelopment project area established under the authority of K.S.A. 12-1772, and amendments thereto, unless the resolution authorizing the same specifically authorized a portion of the proceeds of such levy to be used to pay the principal of and interest upon bonds issued by a city under the authority of K.S.A. 12-1774, and amendments thereto.

(11) Counties shall have no power under this section to exempt from any statute authorizing or requiring the levy of taxes and providing substitute and additional provisions on the same subject, unless the resolution authorizing the same specifically provides for a portion of the proceeds of such levy to be used to pay a portion of the principal and interest on bonds issued by cities under the authority of K.S.A. 12-1774, and amendments thereto.

(12) Counties may not exempt from or effect changes in the provisions of K.S.A. 19-4601 through 19-4625, and amendments thereto.

(13) Except as otherwise specifically authorized by K.S.A. 12-1,101 through 12-1,109, and amendments thereto, counties may not levy and collect taxes on incomes from whatever source derived.

(14) Counties may not exempt from or effect changes in K.S.A. 19-430, and amendments thereto.

(15) Counties may not exempt from or effect changes in K.S.A. 19-302, 19-502b, 19-503, 19-805 or 19-1202, and amendments thereto.

(16) (A) Counties may not exempt from or effect changes in K.S.A. 13-13a26, and amendments thereto.

(B) This provision shall expire on June 30, 2006.

(17) (A) Counties may not exempt from or effect changes in K.S.A. 71-301a, and amendments thereto.

(B) This provision shall expire on June 30, 2006.

(18) Counties may not exempt from or effect changes in K.S.A. 19-15, 139, 19-15,140 and 19-15,141, and amendments thereto.

(19) Counties may not exempt from or effect changes in the provisions of K.S.A. 12-1223, 12-1225, 12-1225a, 12-1225b, 12-1225c and 12-1226, and amendments thereto, or the provisions of K.S.A. 12-1260 through 12-1270 and 12-1276, and amendments thereto.

(20) Counties may not exempt from or effect changes in the provisions of K.S.A. 19-211, and amendments thereto.

(21) Counties may not exempt from or effect changes in the provisions of K.S.A. 19-4001 through 19-4015, and amendments thereto.

(22) Counties may not regulate the production or drilling of any oil or gas well in any manner which would result in the duplication of regulation by the state corporation commission and the Kansas department of health and environment pursuant to chapter 55 and chapter 65 of the Kansas Statutes Annotated, and amendments thereto, and any rules and regulations adopted pursuant thereto. Counties may not require any license or permit for the drilling or production of oil and gas wells. Counties may not impose any fee or charge for the drilling or production of any oil or gas well.

(23) Counties may not exempt from or effect changes in

K.S.A. 79-41a04, and amendments thereto.

(24) Counties may not exempt from or effect changes in K.S.A. 79-1611, and amendments thereto.

(25) Counties may not exempt from or effect changes in K.S.A. 79-1494, and amendments thereto.

(26) Counties may not exempt from or effect changes in subsection (b) of K.S.A. 19-202, and amendments thereto.

(27) Counties may not exempt from or effect changes in subsection (b) of K.S.A. 19-204, and amendments thereto.

(28) Counties may not levy or impose an excise, severance or any other tax in the nature of an excise tax upon the physical severance and production of any mineral or other material from the earth or water.

(29) Counties may not exempt from or effect changes in K.S.A. 79-2017 or 79-2101, and amendments thereto.

(30) Counties may not exempt from or effect changes in K.S.A. 2-3302, 2-3305, 2-3307, 2-3318, 17-5904, 17-5908, 47-1219, 65-171d, 65-1,178 through 65-1,199, and amendments thereto.

(31) Counties may not exempt from or effect changes in K.S.A. 2005 Supp. 80-121, and amendments thereto.

(32) Counties may not exempt from or effect changes in K.S.A. 19-228, and amendments thereto.

(33) Counties may not exempt from or effect changes in the wireless enhanced 911 act or in the provisions of K.S.A. 12-5301 through 12-5308, and amendments thereto.

(34) Counties may not exempt from or effect changes in K.S.A. 2005 Supp. 26-601, and amendments thereto.

(35) (A) From and after November 15, 2005, counties may not exempt from or effect changes in the Kansas liquor control act except as provided by paragraph (B).

(B) From and after November 15, 2005, counties may adopt resolutions which are not in conflict with the Kansas liquor control act.

(36) (A) From and after November 15, 2005, counties may not exempt from or effect changes in the Kansas cereal malt beverage

act except as provided by paragraph (B).

(B) From and after November 15, 2005, counties may adopt resolutions which are not in conflict with the Kansas cereal malt beverage act.

(37) Counties may not exempt from or effect changes in sections 1 through 14 of this act, and amendments thereto.

(b) Counties shall apply the powers of local legislation granted in subsection (a) by resolution of the board of county commissioners. If no statutory authority exists for such local legislation other than that set forth in subsection (a) and the local legislation proposed under the authority of such subsection is not contrary to any act of the legislature, such local legislation shall become effective upon passage of a resolution of the board and publication in the official county newspaper. If the legislation proposed by the board under authority of subsection (a) is contrary to an act of the legislature which is applicable to the particular county but not uniformly applicable to all counties, such legislation shall become effective by passage of a charter resolution in the manner provided in K.S.A. 19-101b, and amendments thereto.

(c) Any resolution adopted by a county which conflicts with the restrictions in subsection (a) is null and void.

Sec. 10. K.S.A. 26-501 is hereby amended to read as follows: 26-501. (a) The procedure for exercising eminent domain, as set forth in K.S.A. 26-501 ~~to-26-516, inclusive~~ through 26-518 and sections 1 through 7, and amendments thereto, shall be followed in all eminent domain proceedings.

(b) The proceedings shall be brought by filing a verified petition in the district court of the county in which the real estate is situated, except if it be an entire tract situated in two (2) or more counties, the proceedings may be brought in any county in which any tract or parts thereof is situated.

Sec. 11. K.S.A. 2005 Supp. 26-504 is hereby amended to read as follows: 26-504. ~~If the judge to whom the proceeding has been assigned finds from the petition:~~ (a) In an eminent domain

proceeding, the court shall determine de novo whether the decision by the plaintiff, based upon substantial competent evidence, complies with the following:

(1) The plaintiff has the power of eminent domain; and

(2) the taking is necessary to the lawful corporate purposes of the plaintiff;

(3) the decision to condemn property was reasonable, was made in good faith and was not made fraudulently; and

(4) the taking was made in compliance with this act.

(b) If the court has made the findings pursuant to subsection (a), then the judge shall entertain suggestions from any party in interest relating to the appointment of appraisers and the judge shall enter an order appointing three disinterested residents of the county in which the petition is filed, at least two of the three of whom shall have experience in the valuation of real estate, to view and appraise the value of the lots and parcels of land found to be necessary, and to determine the damages and compensation to the interested parties resulting from the taking. Such order shall also fix the time for the filing of the appraisers' report at a time not later than 45 days after the entry of such order except for good cause shown, the court may extend the time for filing by a subsequent order. The granting of an order determining that the plaintiff has the power of eminent domain and that the taking is necessary to the lawful corporate purposes of the plaintiff shall not be considered a final order for the purpose of appeal to the supreme court, but an order denying the petition shall be considered such a final order.

(c) Appeals to the supreme court may be taken from any final order under the provisions of this act. Such appeals shall be prosecuted in like manner as other appeals and shall take precedence over other cases, except cases of a like character and other cases in which preference is granted by statute.

Sec. 12. K.S.A. 26-513 is hereby amended to read as follows:  
26-513. (a) Necessity. Private property shall not be taken or damaged for public use without just compensation.



(b) Taking entire tract. (1) Except when property is taken pursuant to sections 3 or 5, and amendments thereto, if the entire tract of land or interest in such land is taken, the measure--of compensation is shall be the fair market value of the property or interest at the time of the taking.

(2) When an entire tract of property is taken pursuant to sections 3 or 5, and amendments thereto, the compensation shall be calculated as follows: (A) When the owner from whom the land is being taken has owned the property less than five years, compensation shall be 125% of the fair market value of the property or interest at the time of the taking;

(B) when the owner from whom the land is being taken has owned the property at least five years, but less than 10 years, compensation shall be 150% of the fair market value of the property or interest at the time of the taking;

(C) when the owner from whom the land is being taken has owned the property at least 10 years, but less than 15 years, compensation shall be 175% of the fair market value of the property or interest at the time of the taking; or

(D) when the owner from whom the land is being taken has owned the property at least 15 years, compensation shall be 200% of the fair market value of the property or interest at the time of the taking.

(c) Partial taking. (1) Except when property is taken pursuant to sections 3 or 5, and amendments thereto, if only a part of a tract of land or interest is taken, compensation is shall be the difference between the fair market value of the entire property or interest immediately before the taking, and the value of that portion of the tract or interest remaining immediately after the taking.

(2) When only a part of a tract of property or interest is taken pursuant to sections 3 or 5, and amendments thereto, compensation shall be the difference between the fair market value of the entire property or interest immediately before the taking, and the fair market value of that portion of the tract or

interest remaining immediately after the taking, multiplied by:

(A) 125% when the owner from whom the land is being taken has owned the property less than five years;

(B) 150% when the owner from whom the land is being taken has owned the property at least five years, but less than 10 years;

(C) 175% when the owner from whom the land is being taken has owned the property at least 10 years, but less than 15 years;

(D) 200% when the owner from whom the land is being taken has owned the property at least 15 years.

(d) Nothing in this section shall preclude the parties from negotiating a greater percentage of compensation.

(e) Factors to be considered. In ascertaining the amount of compensation and damages, the following nonexclusive list of factors shall be considered if such factors are shown to exist. Such factors are not to be considered as separate items of damages, but are to be considered only as they affect the total compensation and damage under the provisions of subsections (b) and (c) of this section. Such factors are: (1) The most advantageous use to which the property is reasonably adaptable.

(2) Access to the property remaining.

(3) Appearance of the property remaining, if appearance is an element of value in connection with any use for which the property is reasonably adaptable.

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

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

(6) Severance or division of a tract, whether the severance is initial or is in aggravation of a previous severance; changes of grade and loss or impairment of access by means of underpass or overpass incidental to changing the character or design of an existing improvement being considered as in aggravation of a previous severance, if in connection with the taking of

additional land and needed to make the change in the improvement.

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

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

(9) Destruction of a legal nonconforming use.

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

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

(12) Loss of or damage to growing crops.

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

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

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

New Sec. 13. The provisions of sections 1 through 7 shall be part of and supplemental to the eminent domain procedure act.

Sec. 14. K.S.A. 26-501 and 26-513 and K.S.A. 2005 Supp. 12-1773, 19-101a and 26-504 are hereby repealed.

Sec. 15. This act shall take effect and be in force from and after its publication in the statute book.