

CHAPTER 110

SENATE BILL No. 461
(Amended by Chapter 180)

AN ACT concerning eminent domain; relating to acquisition of land for certain purposes by a port authority or county; relating to the filing of the appraisers' report; concerning relocation assistance; amending K.S.A. 12-3408 and 26-504 and K.S.A. 2003 Supp. 12-3402, 12-3406, 19-101a and 58-3502 and repealing the existing sections.

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

Section 1. K.S.A. 2003 Supp. 12-3402 is hereby amended to read as follows: 12-3402. (a) It is the purpose of this act to promote, stimulate and develop the general welfare, economic development and prosperity of the state of Kansas by fostering the growth of intrastate and interstate commerce within the state; to promote the advancement and retention of ports within the state; to encourage and assist in the location of new business and industry in this state and the expansion, relocation or retention of existing business and industry when so doing will help maintain existing levels of commerce within the state or increase the movement of commodities, goods and products produced, manufactured or grown within or without the state through existing ports within the state or lead to the development of new ports within the state; and to promote the economic stability of the state by maintaining and providing employment opportunities, thus promoting the general welfare of the citizens of this state, by authorizing port authorities to be established in each city and in each county of the state.

A port authority shall be a public body corporate and politic which if established shall be known as the "port authority" of the city or of the county. Joint port authorities may be created under authority of this act by cooperative agreement executed by the governing bodies of any city or county or cities or counties. Such joint authorities formed by such cooperative agreement shall have all the powers and jurisdiction enumerated in this act. Such creation shall be by ordinance or resolution. Except for port authorities created prior to April 1, 1981, no port authority shall be created without approval of the legislature by concurrent resolution. The authority shall not transact any business or exercise powers hereunder until the passage of a concurrent resolution by the legislature as hereinbefore provided.

No port authority located in Cowley county shall modify, amend or extend the port authority's official plan as originally adopted by the port authority to change the purpose for which it was created or alter the character of the work to be undertaken, as provided by K.S.A. 12-3406, and amendments thereto, without approval of the legislature by concurrent resolution. The port authority shall not transact any business or exercise powers hereunder concerning any business or actions related to such modification, amendment or extension of the original plan.

A cooperative agreement creating a joint port authority may be amended by the governing bodies of the cities and counties which comprise such port authority. Any amendment to such a cooperative agreement, including amendments which allow other cities located within counties which are parties to the original agreement to join in such agreement, shall not require approval by the legislature.

No member of the authority shall serve as such who owns land, other than a residence, or represents in a fiduciary capacity or as agent any person who owns land surveyed or examined for port locations, except that this prohibition shall not prevent a user of a port facility from serving as a member of the authority.

A port authority may sue and be sued, plead and be impleaded, subject to the limitations and other provisions of the Kansas tort claims act. The exercise by such port authority of the powers conferred upon it shall be deemed to be essential governmental functions of the creating city or county.

(b) Any city or county creating or participating in the creation of a port authority, before any taxes are levied shall submit the question of whether an annual tax levy may be made on the assessed taxable tangible property of such city, county, or a combination thereof, and the amount thereof to the electors of such city or county comprising such authority. If a majority of those voting on the question vote in favor of such tax levy, the same may be made for such purpose and to pay a portion of the

principal and interest on bonds issued under the authority of K.S.A. 12-1774, and amendments thereto, by cities located in the county, and otherwise such tax levy shall not be made. If such tax levy is approved, the authority may expend funds not otherwise appropriated to defray the expense of surveys and examinations incidental to the purposes of the port authority and may expend funds for any of the purposes as set forth in K.S.A. 12-3406, and amendments thereto.

(c) Subject to making due provisions for payment and performance of its obligations, a port authority may be dissolved by the city or county, or combination thereof, comprising it. If the port authority is dissolved, the properties of the port authority shall be transferred to the subdivision comprising it, or, if comprised by more than one city or county, to the city or county comprising it in such manner as may be agreed upon by them. Obligations of the authority shall not be obligations of the state of Kansas, nor of any city or county which creates the authority, unless the obligations are specifically approved by a majority vote of the electors of such city or county voting on the issue. Notice of such election shall be published in a newspaper of general circulation in the county or counties once each week for two consecutive weeks. The first publication shall be not less than 21 days prior to such election. Such notice shall set forth the time and place of holding the election and the issue which the vote is to determine.

Sec. 2. K.S.A. 2003 Supp. 12-3406 is hereby amended to read as follows: 12-3406. A port authority established by K.S.A. 12-3402, and amendments thereto, *shall clearly state the purpose for which it is to be created and the character of the work to be undertaken as a part of its official plan; and shall have full power and authority to:*

(a) Purchase, acquire, construct, reconstruct, improve, equip, furnish, maintain, repair, enlarge, remodel, own, sell, lease, and operate docks, wharves, warehouses, piers, and other water-port facilities, airport facilities, terminal facilities, land transportation facilities, railroad facilities or industrial-use facilities within the area of its jurisdiction, as defined by K.S.A. 12-3405, and amendments thereto, consistent with the purpose of the port authority, which purpose is hereby declared to be for a public purpose;

(b) (1) borrow money from private financial institutions, any agency of the state of Kansas or of the United States of America or a private person or entity approved by the port authority, and to issue therefor such notes or other evidence of indebtedness as may be required and to mortgage, pledge, or otherwise encumber the assets of the authority as security therefor, or (2) issue bonds as provided in K.S.A. 12-3415, and amendments thereto;

(c) apply for, receive, and participate in any grants from the state of Kansas or from the United States of America;

(d) construct, straighten, deepen, and improve any canal, channel, river, stream, or other watercourse or way which may be necessary or proper in the development of the facilities of such port;

(e) purchase, acquire, own, maintain, furnish, improve, repair, enlarge, remodel, construct, reconstruct, equip, hold, sell, lease, or operate real or personal property for the authorized purposes of the port authority, which exercise of such authority is hereby declared to be for a public purpose;

(f) apply to the proper authorities of the United States government for a grant within the limits of the port authority either individually or in conjunction with a corporate instrumentality of this state and one or more states, or a bi-state compact or a not-for-profit corporation authorized to do business in this state and to establish, operate and maintain foreign trade zones pursuant to the foreign trade-zone act, 19 U.S.C.A. 81a to 81u, inclusive, as amended;

(g) exercise the right of eminent domain, if approved by a $\frac{2}{3}$ vote of the governing body of the port authority, to appropriate any land, rights, rights-of-way, franchises, easements, or other property, necessary or proper for the construction or the efficient operation of any facility of the port authority and included in an official plan, pursuant to the procedure provided by law, if funds equal to the appraised value of the property to be acquired as the result of such proceedings shall be on hand and available for such purposes. The port authority shall not exercise the right of eminent domain without first having received approval, by resolution, of the governing body of the city or county which created such port au-

thority. If the port authority was created by two or more cities or counties, the port authority shall not exercise the right of eminent domain without first having received approval, by resolution, of the governing body of the city or county in which such property is located. If such property is located outside the boundaries of the port authority, such port authority shall not exercise the right of eminent domain without first having received approval, by resolution, of the governing body of the city if such property is located within the corporate limits of a city or from the board of county commissioners if such property is located within the unincorporated area of a county. A port authority shall not have the right of eminent domain to acquire a site for an industrial-use facility. *A port authority shall not have the right of eminent domain to acquire any land or site in Cowley county for which at least one of the purposes is a recreational-use purpose. If a port authority exercises the right of eminent domain to acquire any land or site in Cowley county, such land or site shall be used only for the public purpose stated in the port authority's original official plan and there shall be no private development on any such land or site for a period of 30 years after the acquisition of any such land or site. A port authority shall not exercise the right of eminent domain to acquire any land or site prior to a showing that all required state and federal permits to use or develop any such land or site in the manner specified in the port authority's official plan have been obtained.*

Nothing contained in K.S.A. 12-3401 to 12-3433, inclusive, and amendments thereto, shall authorize a port authority to take or disturb property or facilities belonging to any public corporation, public utility, or common carrier, which property or facilities are necessary and convenient in the operation of such public corporation, public utility, or common carrier, unless provision is made for the restoration, relocating, or duplication of such property or facilities, or upon the election of such public corporation, public utility, or common carrier for the payment of compensation, if any, at the sole cost of the port authority.

If any restoration or duplication proposed to be made hereunder shall involve a relocation of such property or facilities, the new facilities and location shall be of at least comparable utilitarian value and effectiveness and such relocation shall not impair the ability of the public utility or common carrier to compete in its original area of operation.

If any restoration or duplication made hereunder shall involve a relocation of such property or facilities, the port authority shall acquire no interest or right in or to the appropriated property or facilities, except as provided in subsection (c) of K.S.A. 12-3406, and amendments thereto, until the relocated property or facilities are available for use and until marketable title thereto has been transferred to the public utility or common carrier.

Provisions for restoration, relocation, or duplication shall be described in detail in the plan specified in K.S.A. 12-3407, and amendments thereto;

(h) maintain such funds as it deems necessary;

(i) direct its agents or employees, when properly identified in writing, and after at least five days' written notice, to enter upon lands within the confines of its jurisdiction in order to make surveys and examinations preliminary to location and construction of works for the purposes of the port authority, without liability of the port authority or its agents or employees except for actual damage done;

(j) sell, lease or convey real and personal property not needed for the operation of the port authority and grant easements of rights-of-way over property of the port authority; and

(k) promote, advertise, and publicize the port and its facilities; provide traffic information and rate information to shippers and shipping interests.

Sec. 3. K.S.A. 12-3408 is hereby amended to read as follows: 12-3408. (a) *Except as provided by subsection (b)*, the board of directors shall, from time to time after the adoption of an official plan, have the power to modify, amend or extend the same, provided that upon the making of any such modification, amendment or extension thereof, the board of directors shall cause notice to be given and shall conduct a hearing, all as provided in K.S.A. 12-3407, and amendments thereto.

(b) *The board of directors of a port authority located in Cowley county shall not have the power to modify, amend or extend the same to change or alter the character of the work to be undertaken by the port authority which would allow the use of any land or site acquired through*

the exercise of eminent domain to be used for a recreational-use purpose, nor to allow private development upon such acquired land or site for a period of 30 years from the date of acquisition of such land or site. The board shall not adopt any modification, amendment, or extension until the notice has been given and the hearing held as therein provided.

New Sec. 4. Cowley county may not exercise the right of eminent domain to appropriate any land or site for which at least one of the purposes is a recreational-use purpose or if such county exercises the right of eminent domain to appropriate land or site, there shall be no private development on such land or site for a period of 30 years after such appropriation of land. Cowley county may not exercise the right of eminent domain to appropriate any land or site prior to a showing that all required state and federal permits to use or develop such land or site in the manner specified by the county have been obtained.

Sec. 5. K.S.A. 2003 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, 2005.

(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, 2005.

(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 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 or K.S.A. 2003 Supp. 17-5909, and amendments thereto.

(31) Counties may not exempt from or effect changes in K.S.A. 2003 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 section 4, 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. 6. On and after July 1, 2004, K.S.A. 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: (1) The plaintiff has the power of eminent domain; and (2) the taking is necessary to the lawful corporate purposes of the plaintiff, 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 ~~20~~ 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.

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. 7. On and after July 1, 2004, K.S.A. 2003 Supp. 58-3502 is hereby amended to read as follows: 58-3502. Whenever any program or project is undertaken by the state of Kansas, any agency or political subdivision thereof, under which federal financial assistance will be available to pay all or part of the cost of such program by reason of a grant from or contract or agreement with the federal government, and which program or project will result in the displacement of any person by acquisition of real property, or by the direct result of building code enforcement activities, rehabilitation or demolition programs, the state, agency, or political subdivision shall:

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

(2) provide relocation assistance programs offering to displaced persons and others occupying property immediately adjacent to the real property acquired, the services described in section 205 of the federal act on the conditions prescribed therein. *Relocation payments shall not be required until title to the real property vests in the condemning authority;*

(3) in acquiring the real property be guided to the greatest extent practicable under state law by the land acquisition policies in section 301 and the provisions of section 302 of the federal act;

(4) pay or reimburse property owners for necessary expenses as specified in sections 303 and 304 of the federal act;

(5) share costs of providing payments and assistance with the federal government in the manner and to the extent required by sections 211 (a) and (b) of the federal act; ~~and~~

(6) appoint such officers, enter into such contracts, utilize federal funds for planning and providing comparable replacement housing, and take such other actions as may be necessary to comply with the conditions and requirements of the federal act; *and*

(7) *under circumstances where a displaced person demonstrates that receipt of such payments in advance of the actual relocation is required to enable the relocation and estimates are provided by the displaced person to the state, agency or political subdivision that will allow such governmental entity to estimate with reasonable accuracy the relocation payments, 75% of such amount shall be advanced to the displaced person or paid to third parties on behalf of the displaced person to facilitate the relocation. Any remaining payment due shall be made within 30 days after the relocation has been completed. Payment of such relocation advances shall not be required until title to the real property vests in the condemning authority.*

New Sec. 8. On and after July 1, 2004: (a) Whenever federal funding is not involved, real property is acquired by any condemning authority through negotiation in advance of a condemnation action or through a condemnation action and the acquisition will result in the displacement of any person, the condemning authority shall:

(1) Provide the displaced person, as defined in the federal uniform relocation assistance and real property acquisition policies act of 1970, and amendments thereto, fair and reasonable relocation payments and assistance to or for displaced persons. Relocation payments shall not be required until title to the real property vests in the condemning authority.

(2) Fair and reasonable relocation payments and assistance to or for displaced persons as provided under sections 202, 203 and 204 of the federal uniform relocation assistance and real property acquisition policies act of 1970, and amendments thereto, shall be deemed fair and rea-

sonable relocation payments and assistance pursuant to this section.

(3) Nothing in this section shall preclude the voluntary negotiation of fair and reasonable relocation payments and assistance between the displaced person and condemning authority. If such negotiations lead to agreement between the displaced person and the condemning authority, that agreement shall be deemed fair and reasonable.

(4) Under circumstances where a displaced person demonstrates that receipt of such payments, in advance of the actual relocation, is required to enable the relocation and estimates are provided by the displaced person to the condemning authority that will allow such authority to estimate with reasonable accuracy the relocation payments, 75% of such amount shall be advanced to the displaced person or paid to third parties on behalf of the displaced person to facilitate the relocation. Any remaining payment due will be made within 30 days after the relocation has been completed. Payment of such relocation advances shall not be required until title to the real property vests in the condemning authority.

(b) This section shall be a part of and supplemental to article 35 of chapter 58 of the Kansas Statutes Annotated, and amendments thereto.

New Sec. 9. On and after July 1, 2004: (a) Any displaced person entitled to benefits under this article may appeal by written notice to the state, agency or political subdivision a determination of relocation payments. If such an appeal is made to the state, agency or political subdivision within 60 days of the receiving notice of the determination being appealed, an independent hearing examiner shall be appointed by the state, agency or political subdivision within 10 days and a determination of the appeal made within 60 days. Any party wishing to appeal the ruling of the hearing examiner may do so by filing a written notice of appeal with the clerk of the district court within 30 days of the hearing examiner's decision. In the event any parties shall perfect an appeal to district court, copies of such notice of appeal shall be mailed to all parties affected by such appeal within three days after the date of perfection thereof. Any such appeal to district court shall be a trial de novo only on the issue of relocation benefits.

(b) This section shall be a part of and supplemental to article 35 of chapter 58 of the Kansas Statutes Annotated, and amendments thereto.

Sec. 10. On and after July 1, 2004, K.S.A. 26-504 and K.S.A. 2003 Supp. 58-3502 are hereby repealed.

Sec. 11. K.S.A. 12-3408 and K.S.A. 2003 Supp. 12-3402, 12-3406 and 19-101a are hereby repealed.

Sec. 12. This act shall take effect and be in force from and after its publication in the Kansas register.

Approved April 16, 2004.

Published in the *Kansas Register* April 22, 2004.
