

SESSION OF 2006

**SUPPLEMENTAL NOTE ON
SUBSTITUTE FOR SENATE BILL NO. 323**

As Amended by House Committee of the Whole

Brief*

Sub. for SB 323 would prohibit the use of eminent domain for economic development purposes unless the Legislature approves the taking; change certain eminent domain procedures and compensation provisions; and require surveys of land to be taken through the exercise of eminent domain shall be performed by a licensed land surveyor.

The bill would provide that taking of private property by eminent domain for the purpose of selling, leasing or transferring it to another private entity including under the tax increment financing law is not permitted unless the taking meets any of the following:

- 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 of the Kansas Department of Transportation or a municipality;
- The property is used for the operation of facilities necessary for the provision of services of any privately-owned common carrier;
- The private property owner has acquiesced in writing to the taking by any municipality;
- The property has defective or unusual conditions of title or unknown ownership interests in the property and is taken by any municipality;
- The property is unsafe for occupation by humans under the building codes;
- The taking is expressly authorized by the Legislature on or after

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

July 1, 2006, by enactment of law that identifies the specific tract or tracts to be taken.

The tax increment financing law also would be amended to provide that compensation for projects currently in progress will be governed by that act but the bill will govern compensation for projects begun on or after July 1, 2006. Further, the restrictions on eminent domain under the bill shall not apply if the tax increment redevelopment district was created prior to the effective date of the Act.

The bill would add another exemption to the county home rule law to provide that a county may not exempt itself from or effect changes in this act.

Municipality is defined to include cities, counties and unified governments.

The Kansas Eminent Domain Procedure Act would be amended to reduce from three to two the number of appraiser appointed; to set the compensation level at 200 percent of the average of the two appraisers' appraisals and to delete the measure of compensation as the fair market value; to allow a defendant 30 days to remove personal property from his real property which has been condemned; and to provide that an appeal is deemed perfected upon the filing of a notice of appeal and applying this clarification retroactively to July 1, 2003.

Background

The U.S. Supreme Court on June 23, 2005, ruled in *Kelo v. New London* that the "public use" provision of the "takings clause" of the 5th Amendment of the *U.S. Constitution* permits the use of eminent domain for economic development purposes without a finding that the private property to be taken is blighted. The case has led to a number of states to consider restrictions on the use of the power of eminent domain for economic development purposes. For more background information see "Eminent Domain," Kansas Legislator Briefing Book 2006.

The Senate Committee on Judiciary held hearings on two proposed constitutional amendments to restrict or prohibit the taking of private property for economic development purposes and held hearings on three bills which would restrict the use of the power of

eminent domain. Proponents of the restrictions included several legislators, various farm organizations and others. Opponents of curtailment or banning the use of eminent domain for economic development purposes included representatives of cities, counties, economic development organizations, chambers of commerce and others.

The chairman of the Senate Judiciary Committee asked the groups to meet and develop a compromise. The bill represents the compromise work of those groups.

The Senate Committee of the Whole deleted provisions in the bill which would have permitted the taking of private property for economic development purposes subject to certain expanded procedural requirements and enhanced compensation requirements.

The House Committee of the Whole amendments included those made to the Kansas Eminent Domain Procedure Act, the licensed land surveyor provisions and the provisions exempting redevelopment districts already created from eminent domain restrictions of this Act.