

SESSION OF 2006

**SUPPLEMENTAL NOTE ON HOUSE  
CONCURRENT RESOLUTION NO. 5025**

As Recommended by House Committee on  
Federal and State Affairs

**Brief\***

HCR 5025 proposes to amend Article 15 of the *Kansas Constitution* by adding a new section that would prohibit state or local governments from taking, by eminent domain, private real property, except for public use. Public use would be defined as possession, occupation or enjoyment of the land by the public at large, or by public agencies, or to acquire real property to eliminate an immediate threat to public health or safety.

The entity proposing the taking by eminent domain would be required to file a petition with the district court to determine if the contemplated use is a public use and would have the burden of proving, by clear and convincing evidence, that the taking is for public use. Except for real property taken to eliminate an immediate threat to public health or safety, compensation for the real property taken would be presumed just compensation if the amount is not less than 150 per cent of the highest yearly appraised value of the real property during the preceding five years. Just compensation for real property taken to eliminate an immediate threat to public health or safety would be determined by the court.

The taking entity would be required to own and use the real property taken by eminent domain for at least seven years, otherwise the real property would be required to be sold back to the owner of the real property taken by eminent domain for the same amount he or she was paid. If the owner does not purchase the real property, it would be able to be sold, or transferred to a third party.

If approved by a two-thirds majority of the House and a two-thirds majority of the Senate, the proposition to amend the *Kansas Constitution* would be submitted to the qualified electors of Kansas at

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\*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>

the general in November 2006 for approval or rejection. If the proposed amendment is approved by a majority of the electors voting, it would become part of the *constitution*.

## **Background**

Currently, the exclusive procedure for exercising the power of eminent domain in Kansas can be found at KSA 26-501 to KSA 26-517. Prior to the adoption of the Eminent Domain Procedure Act of 1963, there were numerous separate statutory procedures for taking property under the eminent domain power.

A briefing on the Resolution was conducted in the House Committee.

There was no fiscal note from the Division of Budget.