

Douglas J. Patterson, Attorney at Law

4630 W. 137th, 9
Leawood, Kansas 66224

Douglas J. Patterson
Doug@pattersonlawkc.com
913-396-5105.

Admitted in Kansas and Missouri

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Chair – Sen. Kellie Warren
Vice Chair – Sen. Rick Wilborn
Ranking Member – Sen. Ethan Corson
Sen. Molly Baumgardner
Sen. Elaine Bowers
Sen. Beverly Gossage
Sen. David Haley
Sen. Robert Olson
Sen. Mark Steffen

Re: In support of SB 61 with amendment to include the provisions of SB 441 (2024).

Madam Chair Warren and Members of the Senate Judiciary Committee,

As a former member of the Kansas House (Dist. 28, 2020-2004) and a real estate attorney often representing property owners in eminent domain/condemnation proceedings, it is my pleasure to appear in support of SB 61, with an amendment to include the provisions of SB 441 (2024) – **attached**.

SB 61 represents a system of checks and balances in the court appointed appraisers' system; wherein the landowners are just minding their business before being advised of a taking of property by a public electric utility. If the landowner appeals to a court and receives an award in excess of the court appointed appraiser's award, something went wrong in the court appointed appraisers' process, all due to the taking of property sought by the electric utility, not a process started by the landowner. The landowner had to hire an attorney and SB 61 makes legal fees reimbursements for a process which the landowner did not start. The Fifth Amendment United States Constitution provides, "nor shall private property be taken for public use, without just compensation." It does not provide that, "nor shall private property be taken for public use, without just compensation – *after paying required court costs and attorney's fees*". The net result is actually the receipt of less than Just Compensation. Condemnation attorneys on behalf of landowners do not believe that SB 61 should be limited to public electric utility companies.

Consideration of SB 61 (the litigation condemnation process) leads to a further look at the pre-litigation condemnation process. This is why I am urging the Committee to amend SB 61 to include the provisions of SB 441 (2024).

The goal of SB 441 is twofold:

1. Allow property owners and government or utility entities to have the chance to negotiate property takings with eyes open and being well informed.
2. Reduce eminent domain litigation, while allowing the entity to acquire the property sought.

Too often, after years of project planning, completing the engineering and letting construction contracts, a governmental entity or utility then sets about acquiring land for the project as the last step - when then, time is of the essence. And again, too often, the process looks as follows:

- A. The property owner receives a letter from the taking entity advising that the owner's property needs to be acquired, the land to be acquired is described only as a long meet and bounds description (not including a survey or graphic image showing where the land to be taken is located), and including an offer for the taking property and giving the property owner ten (10) days to respond.
- B. While the property owner is trying to find out what's going on, a condemnation petition is filed in the district court, a jurisdictional hearing is set usually within 30 days, and at that point, the property owner needs to go to the expense of hiring an attorney to fight for their own protection.

SB 441 contains the procedures adopted in many states (Missouri included) which allows the taking entity and property owner to be well informed as to the nature of the taking and the opportunity to negotiate and review appraisals in support of the taking authority's offer and the property owner's appraisal counteroffer.

SB 441 sets up the following procedures:

1. Sixty (60) days before a condemnation petition is filed, the condemning authority advises the property owner of:

- a. The property interest to be obtained by legal description or address.
- b. The purpose of the taking.
- c. That the owner may seek an attorney, make a counteroffer, obtain an appraisal, and contest the taking, or settle and waive this whole procedure.

2. Thirty (30) days before a condemnation petition is filed, the condemning authority advises the property owner of an offer to acquire the subject property, accompanied by an appraisal or financial data supporting the offer. Negotiations may continue to, hopefully, a settlement.

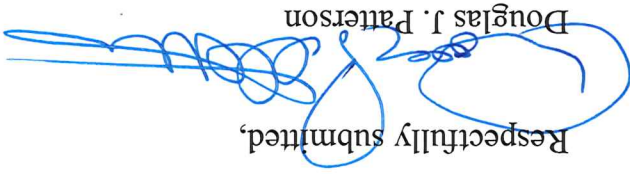
3. If negotiations fail and a condemnation petition is filed, the condemning authority must demonstrate to the Court that it followed the above procedures and the case can proceed.

I know that there are governmental entities and utility companies in Kansas that do their best to timely and fairly negotiate with property owners in lieu of condemnation. This is most admirable, because under current Kansas law, they don't have to do that. Such procedures help the owner understand what's going on and very often results in a settlement. In such instances, the adoption of the provisions of SB 441 in SB 61 will be **"no harm, no foul"** to such governmental entities and utility companies.

However, in too many cases, poor planning and aggressive construction time schedules control the property acquisition process beyond what is reasonably necessary to allow the property owner the opportunity to deal with the taking entity in good faith. The result is litigation, expense and delay on both sides.

I, and other attorneys representing property owners in condemnation matters, respectfully urge you to give SB 61, as amended to include the provisions of SB 441 (2024), a favorable recommendation.

Respectfully submitted,


Douglas J. Patterson

SENATE BILL No. 441

By Committee on Judiciary

1 AN ACT enacting the fairness in condemnation act; relating to the eminent
2 domain procedure act; requiring the plaintiff condemning authority to
3 provide the property owner notice and opportunity for negotiation;
4 providing for court review of compliance with this act.

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

7 Section 1. (a) At least 60 days before filing of a condemnation
8 petition seeking to acquire an interest in real property under K.S.A. 26-
9 502, and amendments thereto, the plaintiff condemning authority shall
10 provide each owner of record of the property with a written notice
11 concerning the intended condemnation. The notice shall include:
12 (1) Identification of the interest in real property to be acquired and a
13 statement of the legal description or commonly known location or address
14 of the property;
15 (2) the purpose or purposes for which the property is to be acquired;
16 (3) a statement that the property owner has the right to:
17 (A) Seek legal counsel at the owner's expense;
18 (B) make a counteroffer for the sale of the property and engage in
19 further negotiations;
20 (C) obtain the owner's own appraisal of the value of the interest to be
21 condemned; and
22 (D) contest the right to condemn in a separate legal proceeding.

23 (b) An owner may waive the notice requirements of this section by a
24 written waiver executed by the owner.

25 (c) The written notice required by this section shall be deposited in
26 the United States mail, certified or registered, and with postage prepaid,
27 addressed to the owner of record as listed in the office of the county
28 appraiser in which the property is located. The receipt issued to the
29 condemning authority by the United States post office for certified or
30 registered mail shall constitute proof of compliance with this notice
31 requirement. Nothing in this section shall preclude a condemning authority
32 from proving compliance by other competent evidence.

33 Sec. 2. (a) The plaintiff condemning authority shall present a written
34 offer to each owner of record of the property. The offer shall be made at
35 least 30 days before filing a condemnation petition as provided in K.S.A.
36 26-502, and amendments thereto. The offer shall be deposited in the

1 United States mail, certified or registered, with postage prepaid, addressed
2 to the owner of record. The receipt issued to the condemning authority by
3 the United States post office for certified or registered mail shall constitute
4 proof of compliance with this requirement. Nothing in this section shall
5 preclude a condemning authority from proving compliance with this
6 requirement by other competent evidence.

7 (b) The plaintiff condemning authority, at the time of the offer, shall
8 provide the property owner with an appraisal or an explanation with
9 supporting financial data for its determination of the value of the property.
10 Any appraisal shall be made by a state certified or licensed appraiser using
11 generally accepted appraisal practices.

12 Sec. 3. (a) Before a district court may enter an order of condemnation
13 under the eminent domain procedure act, K.S.A. 26-501 et seq., and
14 amendments thereto, the court shall make a finding that the plaintiff
15 condemning authority engaged in good faith negotiations prior to filing the
16 condemnation petition. A plaintiff condemning authority shall be deemed
17 to have engaged in good faith negotiations if:

18 (1) All notices to property owners have been given as required by
19 section 1, and amendments thereto;

20 (2) the offer made under section 2, and amendments thereto, was not
21 lower than the amount reflected in an appraisal performed by a state
22 licensed or certified appraiser for the condemning authority, and an actual
23 appraisal was given to the owner as provided in section 2, and
24 amendments thereto;

25 (3) the owner has been given an opportunity to obtain the owner's
26 own appraisal from a state licensed or certified appraiser of the owner's
27 choice; and

28 (4) where applicable, the plaintiff condemning authority has
29 considered any alternate location suggested by the property owner.

30 (b) If the court does not find that good faith negotiations have
31 occurred, the court shall dismiss the condemnation petition, without
32 prejudice, and shall order the condemning authority to reimburse the
33 owner for the owner's actual and reasonable attorney fees and costs
34 incurred with respect to the condemnation proceeding that has been
35 dismissed.

36 (c) Sections 1 through 3, and amendments thereto, shall be known
37 and may be cited as the fairness in condemnation act.

38 (d) The fairness in condemnation act shall be a part of and
39 supplemental to the eminent domain procedure act.

40 Sec. 4. This act shall take effect and be in force from and after its
41 publication in the statute book.