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MEMORANDUM

To: Senate Committee on Judiciary

From: Office of Revisor of Statutes

Date: March 18, 2025

Subject: Eminent Domain Authority

Overview of Eminent Domain Authority

The state possesses an inherent sovereign power of eminent domain to take private property for public use. The legislature may delegate the state's power of eminent domain to public and private entities; e.g. cities,¹ counties,² school districts,³ community colleges,⁴ board of regents,⁵ turnpike authority,⁶ secretary of transportation,⁷ railroad entities,⁸ oil and gas entities for storage and waste disposal,⁹ secretary of health and environment,¹⁰ irrigation districts,¹¹ secretary of wildlife and parks,¹² airport authorities,¹³ watershed districts,¹⁴ drainage districts,¹⁵ industrial districts,¹⁶ fire districts,¹⁷ water districts,¹⁸ airports,¹⁹ municipal energy agencies,²⁰ telecommunications providers²¹.

¹ K.S.A. 26-201, 12-808a, 12-845.

² K.S.A. 19-101, 19-101a.

³ K.S.A. 72-1144.

⁴ K.S.A. 71-201.

⁵ K.S.A. 76-147.

⁶ K.S.A. 68-2006.

⁷ K.S.A. 68-413, 68-423e.

⁸ K.S.A. 66-501.

⁹ K.S.A. 55-1003, 55-1204.

¹⁰ K.S.A. 49-433.

¹¹ K.S.A. 42-705.

¹² K.S.A. 32-840.

¹³ K.S.A. 27-321, 27-331.

¹⁴ K.S.A. 24-1209.

¹⁵ K.S.A. 24-108, 24-204, 24-407, 24-512.

¹⁶ K.S.A. 19-3808.

¹⁷ K.S.A. 19-3601a, 19-3616.

¹⁸ K.S.A. 19-3502.

¹⁹ K.S.A. 3-115, 3-123.

²⁰ K.S.A. 12-895.

²¹ K.S.A. 17-1903.

Eminent Domain Procedure Act

When the power of eminent domain is exercised, proceedings must be conducted pursuant to the eminent domain procedure act found in K.S.A. 26-501 et seq. The act establishes the procedural requirements for an entity to lawfully exercise its eminent domain authority. The eminent domain process begins when an entity files a petition for the taking in the district court where the property is located.²² All parties named in the petition must be notified of the proceedings.²³ The eminent domain proceedings will commence if the court finds that the entity possesses the lawful power of eminent domain and the taking is necessary for the corporate purpose of the entity.²⁴

Public Use Requirement

Eminent domain can only be used to take private property for a "public use."²⁵ Traditional concepts of public use relate to the provision of basic and essential governmental services such as roads, sewers, water facilities, utilities and other public functions. Over time, courts have expanded and broadened the concept of public use beyond such traditional concepts to expand the concept beyond public use to a public benefit analysis.²⁶

Just Compensation

The fifth amendment of the U.S. constitution and article 12 § 4 of the constitution of the state of Kansas prohibit the taking of private property without just compensation. K.S.A. 26-513 of the eminent domain procedure act also prohibits the taking of private property without just compensation and requires that the measure of compensation be based on the "fair market value." The fair market value is generally the value that the property would garner in an open and competitive market.

²² K.S.A. 26-502.

²³ K.S.A. 26-503.

²⁴ K.S.A. 26-504.

²⁵ K.S.A. 26-501a.

²⁶ Both the U.S. Supreme Court and the Kansas Supreme Court have broadened the concept of public use to incorporate purposes beyond traditional concepts of public use. *Kelo v. City of New London*, 545 U.S. 469, 125 S. Ct. 2655 (2005) (A city can condemn property for economic revitalization activities because such activities generally serve a public purpose which is subject to great latitude in interpretation.) *State ex rel. Tomasic v. Unified Gov't of Wyandotte County/Kansas city*, 265 Kan. 779, (1998) (Eminent domain may be used for the construction of the Kansas Speedway because the concept of public use can change over time).

To determine fair market value in an eminent domain proceeding, the presiding judge must appoint three disinterested appraisers.²⁷ The appraisers must take an oath to faithfully discharge their duties as officers of the court.²⁸ The appraisers must refrain from any ex parte communications with the parties and must disclose any written materials provided to the appraisers by one party to the other party.²⁹

To establish the value of the condemned property, the appraisers shall examine the land and hold a public hearing to receive oral or written testimony from interested parties, including the landowner.³⁰ State law provides that the following nonexclusive list of factors shall be considered when determining the amount of compensation to a landowner:

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.

²⁷ K.S.A. 26-504; 26-506.

²⁸ K.S.A. 26-505.

²⁹ *Id.*

³⁰ K.S.A. 26-504; 26-506.

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.³¹

The appraisers must submit an appraisers' report to the court to establish the compensation due to the landowner.³² Any party to the proceeding may file an appeal to the appraisers' award within 30 days following the entry of the appraisers' report.³³ Such an appeal must be filed and docketed as a new civil action and the only issue to be determined in such appeal is the amount of compensation required for the taking.³⁴

Once the appraisers' report is filed, the entity that is exercising the power of eminent domain has 30 days to pay the amount provided in the appraisers' award and court costs.³⁵ Upon payment of such amounts to the court, absent any appeal regarding the valuation, the title or interest in the land immediately vests with the entity and possession may be taken thereof.³⁶ The landowner shall have 14 days to remove any personal property from the premises.³⁷

³¹ K.S.A. 26-513.

³² K.S.A. 26-505.

³³ K.S.A. 26-508.

³⁴ *Id.*

³⁵ K.S.A. 26-507.

³⁶ K.S.A. 26-507.

³⁷ *Id.*