

**SENATE BILL No. 262**

By Committee on Federal and State Affairs

2-11

1 AN ACT concerning eminent domain; eliminating the power of the  
2 legislature to take private property for economic development;  
3 narrowing the definition of public use; requiring a good faith offer of  
4 compensation to a property owner prior to filing an eminent domain  
5 action; providing that if the good faith offer is greater than the  
6 appraiser's award, the greater amount may be subject to appeal only by  
7 the property owner; amending K.S.A. 26-501a, 26-501b, 26-502 and  
8 26-507 and repealing the existing sections.  
9

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

11 New Section 1. (a) At least 30 days before filing a petition under  
12 K.S.A. 26-501 et seq., and amendments thereto, an agency as defined in  
13 K.S.A. 26-501a, and amendments thereto, shall provide notice by personal  
14 service to the owner of property that the agency intends to acquire the  
15 owner's property. The notice shall include a good faith offer of  
16 compensation for the property, which shall be the minimum award of  
17 compensation to the owner. The good faith offer shall not later be reduced  
18 or revoked by the agency, nor shall the agency present evidence or  
19 argument for a lesser amount of compensation in an appeal from an award  
20 notice under K.S.A. 26-508, and amendments thereto.

21 (b) If the agency makes a subsequent offer prior to the filing of the  
22 petition under K.S.A. 26-501 et seq., and amendments thereto, that is a  
23 greater amount than the initial good faith offer, the subsequent greater  
24 amount shall be the minimum award of compensation for such property.

25 Sec. 2. K.S.A. 26-501a is hereby amended to read as follows: 26-  
26 501a. On and after July 1, 2007: (a) Private property shall not be taken by  
27 eminent domain except for public use, and private property shall not be  
28 taken without just compensation.

29 (b) The taking of private property by eminent domain for the purpose  
30 of selling, leasing or otherwise transferring such property to any private  
31 entity is prohibited except as provided in K.S.A. 26-501b, and  
32 amendments thereto.

33 (c) "Agency" includes the state and municipalities as defined in  
34 K.S.A. 75-6102, and amendments thereto, public utilities as defined in  
35 K.S.A. 66-104, and amendments thereto, and other entities listed in K.S.A.  
36 26-501b(b), and amendments thereto.

1 (d) "Public use" does not include the use of any property for  
 2 recreational trails, which are trails used for hiking, bicycling, horseback  
 3 riding or other forms of recreational travel.

4 (e) This section shall be a part of and supplemental to the eminent  
 5 domain procedure act.

6 Sec. 3. K.S.A. 26-501b is hereby amended to read as follows: 26-  
 7 501b. On and after July 1, 2007, the taking of private property by eminent  
 8 domain for the purpose of selling, leasing, or otherwise transferring such  
 9 property to any private entity is authorized if the taking is:

10 (a) By the Kansas department of transportation or a municipality and  
 11 the property is deemed excess real property that was taken lawfully and  
 12 incidental to the acquisition of right-of-way for a public road, bridge or  
 13 public improvement project, including, but not limited to, a public  
 14 building, ~~park, recreation facility~~, water supply project, wastewater and  
 15 waste disposal project, storm water project and flood control and drainage  
 16 project;

17 (b) by any public utility, as defined in K.S.A. 66-104, and  
 18 amendments thereto, gas gathering service, as defined in K.S.A. 55-1,101,  
 19 and amendments thereto, pipe-line companies, railroads and all persons  
 20 and associations of persons, whether incorporated or not, operating such  
 21 agencies for public use in the conveyance of persons or property within  
 22 this state, but only to the extent such property is used for the operation of  
 23 facilities necessary for the provision of services;

24 (c) by any municipality when the private property owner has  
 25 acquiesced in writing to the taking;

26 (d) by any municipality for the purpose of acquiring property ~~which~~  
 27 *that* has defective or unusual conditions of title, including, but not limited  
 28 to, clouded or defective title or unknown ownership interests in the  
 29 property; *or*

30 (e) by any municipality for the purpose of acquiring property ~~which~~  
 31 *that* is unsafe for occupation by humans under the building codes of the  
 32 jurisdiction where the structure is situated;

33 ~~(f) expressly authorized by the legislature on or after July 1, 2007, by  
 34 enactment of law that identifies the specific tract or tracts to be taken. If  
 35 the legislature authorizes eminent domain for private economic  
 36 development purposes, the legislature shall consider requiring  
 37 compensation of at least 200% of fair market value to property owners.~~

38 ~~(g)~~(f) This section shall be a part of and supplemental to the eminent  
 39 domain procedure act.

40 Sec. 4. K.S.A. 26-502 is hereby amended to read as follows: 26-502.  
 41 *Subject to section 1, and amendments thereto*, a petition shall include  
 42 ~~allegations of~~: (1) *Clear and convincing evidence that the taking is*  
 43 *necessary and for a public use, and the agency has the authority for* ~~and~~

1 ~~the purpose of~~ the taking; (2) a description of each lot, parcel or tract of  
2 land and the nature of the interest to be taken; *and* (3) insofar as their  
3 interests are to be taken ~~(a), the name of any owner and all lienholders of~~  
4 record; ~~and (b) the name of any party in possession.~~ Such petition shall be  
5 verified by affidavit. Upon the filing of such petition, the court, by order,  
6 shall fix the time when ~~the same~~ *such petition* will be taken up. No defect  
7 in form ~~which~~ *that* does not impair substantial rights of the parties shall  
8 invalidate any proceeding.

9 Sec. 5. K.S.A. 26-507 is hereby amended to read as follows: 26-507.

10 (a) *Payment of award; vesting of rights.* If the plaintiff desires to continue  
11 with the proceeding as to particular tracts the plaintiff, within 30 days from  
12 the time the appraisers' report is filed, shall pay to the clerk of the district  
13 court the amount of the appraisers' award *or the amount of the good faith*  
14 *offer, if greater, as provided in section 1, and amendments thereto,* as to  
15 those particular tracts and court costs accrued to date, including appraisers'  
16 fees. Such payment shall be without prejudice to plaintiff's right to appeal  
17 from the appraisers' award. Except as provided further, upon such payment  
18 being made, the title, easement or interest appropriated in the land  
19 condemned shall thereupon immediately vest in the plaintiff, and it shall  
20 be entitled to the immediate possession of the land to the extent necessary  
21 for the purpose for which taken and consistent with the title, easement or  
22 interest condemned. If such property contains a defendant's personal  
23 property, a defendant shall have 14 days from the date such payment is  
24 made to the clerk of the district court to remove such personal property  
25 from the premises. The plaintiff shall be entitled to all the remedies  
26 provided by law for the securing of such possession. The clerk of the  
27 district court shall notify the interested parties that the appraisers' award  
28 has been paid and that the defendant shall have 14 days from the payment  
29 date to remove personal property from the premises.

30 (b) *Abandonment.* If the plaintiff does not make the payment  
31 prescribed in subsection (a) for any of the tracts described in the petition,  
32 within 30 days, from the time the appraisers' report is filed, the  
33 condemnation is abandoned as to those tracts, and judgment for costs,  
34 including the appraisers' fees together with judgment in favor of the  
35 defendant for the reasonable expenses incurred in defense of the action,  
36 shall be entered against the plaintiff. After such payment is made by the  
37 plaintiff to the clerk of the court, as provided in subsection (a), the  
38 proceedings as to those tracts for which payment has been made can only  
39 be abandoned by the mutual consent of the plaintiff and the parties  
40 interested in the award.

41 Sec. 6. K.S.A. 26-501a, 26-501b, 26-502 and 26-507 are hereby  
42 repealed.

43 Sec. 7. This act shall take effect and be in force from and after its

- 1 publication in the statute book.