

MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairperson Karin Brownlee at 8:30 A.M. on January 31, 2006 in Room 123-S of the Capitol.

All members were present except:
Laura Kelly- excused

Committee staff present:
Kathie Sparks, Kansas Legislative Research Department
Audrey Dunkel, Kansas Legislative Research Department
Helen Pedigo, Revisor of Statutes
Jackie Lunn, Committee Secretary

Conferees appearing before the committee:
Senator Dennis Pyle
Jerry Morgan-Jerry's Bike Shop
David Morgan-Jerry's Bike Shop
John Todd-Citizen in the Real Estate business
Steven Anderson-Institute of Justice
Alan Cobb-Americans for Prosperity
Brent Haden-Kansas Livestock Association
Terry Holdren-Kansas Farm Bureau
Ron Gaches-Coalition for Kansas Job Growth
Tim Danneberg-City of Olathe

Others attending:
See attached list.

Chairperson Brownlee opened the hearing on **SB 360--Eminent domain; prohibition against tax incentive use**, by introducing Helen Pedigo, Revisors office, to review the KELO decision. Ms. Pedigo presented written testimony. (Attachment 1)

Upon the conclusion of Ms. Pedigo's review, Chairperson Brownlee introduced Senator Dennis Pyle to give his testimony. Senator Pyle offered written testimony. (Attachment 2) Senator Pyle stated **SB 360** is a sweet and sour bill. It leaves eminent domain in the governmental tool box while decoupling the use of eminent domain from use with economic incentive tools. As another way of putting this, **SB 360** builds a fence between the use of eminent domain and the use of tax based incentives; "Good fences make good neighbors". Many fences are being torn down today. In closing, Senator Pyle urged the Committee to pass the bill out favorably.

Chairperson Brownlee introduced Jerry Morgan, Jerry's Bike Shop to give his testimony. Mr. Morgan presented written testimony. (Attachment 3) Mr. Morgan is a Bike Shop owner in Topeka and is directly effected by eminent domain. He feels this bill is necessary to stop the pillage of American business and property owners.

Chairperson Brownlee then introduced Mr. Morgan's son, David Morgan. Mr. David Morgan did not present written testimony. He stated that he had been involved with Jerry's Bike Shop most of his life and knows that it is a thriving business. He stated the property on which Jerry's Bike Shop is located, is being taken by eminent domain for the College Hills project in Topeka. He is in favor of this bill to help prevent the pillage of American business and property owners.

Chairperson Brownlee then introduced John Todd, a private citizen in the real estate business, to give his testimony. Mr. Todd presented written testimony. (Attachment 4) Mr. Todd stated he is a real estate broker and land developer in Sedgwick County. He is also a volunteer coordinator for Americans For Prosperity, and a member of the Wichita Independent Business Association. He stated he is opposed to cities, counties and state agencies using their eminent domain power to force someone to unwillingly sell their property so it can be turned over to someone else for economic development. In the absence of the passage of eminent domain legislation that prohibits this practice, Mr. Todd supports passage of **SB 360**.

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Chairperson Brownlee introduced Steven Anderson, Castle Coalition Coordinator for the Institute for Justice, to give his testimony. Mr. Anderson presented written testimony. (Attachment 5) Mr. Anderson stated the Castle Coalition is a nationwide network of grassroots citizens committed to ending eminent domain abuse through outreach and activism. He also stated eminent domain abuse is not just associated with abstract notations of property rights—it affects real people, in cities and on farms, and much more. Kansas has a historic opportunity to reverse years of exploitation and misuse of the eminent domain power by joining states around the country and passing significant and substantial eminent domain reforms. At last count, over 40 states have either passed or are considering passing laws to stop the abuse of eminent domain.

Next, Chairperson Brownlee introduced Alan Cobb representing the Americans for Prosperity in Kansas. Mr. Cobb presented written testimony. (Attachment 6) Mr. Cobb stated they are in favor of **SB 360**. The taking of private property by government should be rare and for true public purposes such as roads, schools, parks and hospitals. **SB 360** would limit government-granted advantages to private real estate developers involved in eminent domain proceeds and thus would somewhat limit selected private developers from having too many unfair advantages. Even with **SB 360** these developers would still have the advantage of eminent domain helping them to accomplish what they can not in an open market place.

Upon the conclusion of Mr. Cobb,s testimony, Chairperson Brownlee introduced Brent Haden representing the Kansas Livestock Association, to give his testimony. Mr. Haden presented written testimony. (Attachment 7) Mr. Haden stated KLA has a long-standing history of defending the private property rights of individuals, and the exercise of eminent domain powers is an issue of great importance to their members. They have become particularly concerned about the growing practice of governments, using eminent domain powers to take property from one private entity for transfer to another private entity. To conclude, he stated, private property rights are a top priority for KLA, and they will continue to ask for reform to end the practice of taking property from one person for transfer to another person.

Chairperson Brownlee then introduced Mr. Terry Holdren, Kansas Farm Bureau to give his testimony as a proponent for **SB 360**. Mr. Holdren presented written testimony. (Attachment 8) Mr. Holdren stated the members of KFB have long been outspoken about intrusion and interference with private property rights by governments, especially when the action results in land being taken from one owner and subsequently conveyed to another under the auspices of economic development. KFB policy, developed at the grassroots level, clearly states that eminent domain procedures should be used only for legitimate governmental purposes. It is our belief that these practices are not legitimate uses of the power and should be limited by both Constitutional and statutory protections. In closing Mr. Holdren stated the current statutes authorizing eminent domain are inadequate, favoring the condemning authority over the landowner. Your efforts to address this crisis are critical and appreciated.

Upon the completion of Mr. Holdren’s testimony the Chair opened the floor for questions of the proponents of the bill. Being no questions, Chairperson Brownlee introduced Ron Gashes, Coalition for Kansas Job Growth, to give his testimony as a opponent on **SB 360**. Mr. Gashes presented written testimony. (Attachment 9) Mr. Gashes stated restrictions on the use of eminent domain are unnecessary. The use of eminent domain for economic development is rare. In rural Kansas, where land is plentiful and jobs are scarce, there is seldom any need to use eminent domain to create an industrial or commercial project. Mr. Gashes sited cases which eminent domain was the last resort for an economic growth project. Without the use of eminent domain economic growth in Kansas would be very slow. In closing, Mr. Gashes stated the Coalition members are experts in economic development and deeply committed to their communities. They support Kansas and Kansans and are opposed to **SB 360**.

Chairperson Brownlee introduced Tim Danneberg, City of Olathe, to give his testimony as an opponent to **SB 360**. Mr. Danneberg offered written testimony. (Attachment 10) Mr. Danneberg stated though the City of Olathe has never used eminent domain for economic development, it is viewed as an important tool for the types of major economic development projects that result in significant new investment, revenue and new jobs for Kansas. In closing, Mr. Danneberg stated the City of Olathe strongly opposes **SB 360** and supports continuing to allow local elected officials to responsibly use eminent domain for projects that create thousands of jobs and hundreds of millions of dollars in investment in our state.

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Chairperson Brownlee introduced Bill Yanek representing the Kansas Association of Realtors to testify as an opponent on **SB 360**. Mr. Yanek presented written testimony. (Attachment 11) Mr. Yanek stated the KAR adopted agenda to ensure that any legislative action impacting the use of eminent domain in Kansas balances private property rights with the need for economic development. KAR believes statutory limitations on the use of eminent domain would buttress private property rights and reinforce the reasonable expectation of impacted property owners. They ask that the Kansas Legislature consider mandating an increased level of scrutiny when eminent domain is used for economic development purposes, which would make a condemnation of projects for economic development purposes more difficult to do.

Chairperson Brownlee opened the floor for questions from the Committee for the opponents of the bill. Being no questions or discussion, Chairperson Brownlee announced she was leaving the hearing open and would have the testimony of Don Moler, League of Kansas Municipalities, on another day. She then turned the Committee's attention to the written only testimony of opponents of the bill which included; Ashley Sherard Lenexa Chamber; Christi Caldwell, Topeka Chamber; Bob Vancrum, Greater Kansas City Chamber; Bill Frost, City of Manhattan; Diane Costello, Johnson County Public Policy Council; and Andrew Nave, Johnson County Partnership.

Chairperson Brownlee adjourned the meeting at 9:30 a.m. with the next scheduled meeting being on Wednesday, February 1, 2006 at 8:30 a.m. in room 123 S.