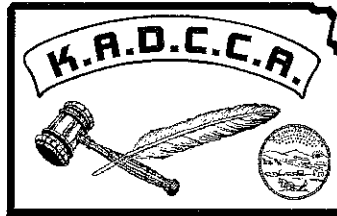


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SENATE JUDICIARY COMMITTEE
Senator Tim Owens, Chair

TESTIMONY IN SUPPORT OF HOUSE BILL 2070
Notice of Payment of Appraisers' Award in Condemnation Procedures
January 18, 2012
Alice Adams, Clerk of the District Court
Geary County District Court
Eighth Judicial District

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today on behalf of the Kansas Association of District Court Clerks and Administrators regarding House Bill 2070.

In condemnation cases filed under K.S.A. Chapter 26, Article 5, after the petition is filed, the court appoints appraisers to value the property in question. The appraisers file their report in the office of the clerk of the district court with their finding, pursuant to K.S.A. 26-505. The condemner pays the amount stated in the report to the clerk of the district court as set out in K.S.A. 26-507(a). The condemner sends notice of the report to all parties as required by statute.

Clerks comply with the statute, but we are finding that the plaintiff's attorneys are generally sending the notice as well. All parties are aware of the statutory time lines. We believe that there is no need for duplication, and that the responsibility should lie with the attorneys, as does the rest of the process.

The House Judiciary Committee recommended the bill favorably last year, but a House floor amendment was added that strikes the Kansas Department of Transportation's right to appeal from an appraiser's award. The House vote on the amended bill was 82 – 38. We would ask that this committee strike the House floor amendment, except that Section 2 be retained, and amended to include language consistent with Section 1 of the bill.

Thank you for your time and consideration.

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Kansas Association of District Court Clerks and
Court Administrators (KADCCA)
Proposed Amendment
Senate Judiciary Committee
January 18, 2012

[As Amended by House Committee of the Whole]

Session of 2011

HOUSE BILL No. 2070

By Committee on Judiciary

1-24

1 AN ACT concerning eminent domain; relating to notification of
2 payment of appraisers' award; ~~notification and restrictions~~;
3 amending K.S.A. 2010 Supp. ~~[26-507, 26-508 and]~~ 26-510 and
4 repealing the existing section ~~sections~~.
5

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

7 Section 1. K.S.A. 2010 Supp. 26-510 is hereby amended to read as
8 follows: 26-510. (a) The clerk of the district court ~~plaintiff or the~~
9 ~~plaintiff's attorney~~ shall notify the defendants within 14 days that the
10 plaintiff has paid the amount of the appraisers' award pursuant to
11 K.S.A. 26-507, and amendments thereto.

12 (b) The defendants may by order of the judge and without
13 prejudice to the defendants' right of appeal withdraw the amount paid
14 to the clerk of the court as the defendants' interests are determined by
15 the appraisers' report.

16 **[Sec. 2. K.S.A. 2010 Supp. 26-507 is hereby amended to read as**
17 **follows: 26-507. (a) Payment of award; vesting of rights. If the**
18 **plaintiff desires to continue with the proceeding as to particular**
19 **tracts the plaintiff, within 30 days from the time the appraisers'**
20 **report is filed, shall pay to the clerk of the district court the amount**
21 **of the appraisers' award as to those particular tracts and court**
22 **costs accrued to date, including appraisers' fees. ~~Except as provided~~**
23 **~~in subsection (c) of K.S.A. 26-508, and amendments thereto, such]~~**
24 **payment shall be without prejudice to plaintiff's right to appeal**
25 **from the appraisers' award. Except as provided further, upon such**
26 **payment being made, the title, easement or interest appropriated in**
27 **the land condemned shall thereupon immediately vest in the**
28 **plaintiff, and it shall be entitled to the immediate possession of the**
29 **land to the extent necessary for the purpose for which taken and**
30 **consistent with the title, easement or interest condemned. If such**
31 **property contains a defendant's personal property, a defendant**
32 **shall have 14 days from the date such payment is made to the clerk**
33 **of the district court to remove such personal property from the**
34 **premises. The plaintiff shall be entitled to all the remedies provided**
35 **by law for the securing of such possession. The ~~clerk of the district~~**

Such

plaintiff or the plaintiff's attorney

1 | court] shall notify the interested parties that the appraisers' award
 2 | has been paid and that the defendant shall have 14 days from the
 3 | payment date to remove personal property from the premises.

4 | (b) Abandonment. If the plaintiff does not make the payment
 5 | prescribed in subsection (a) for any of the tracts described in the
 6 | petition, within 30 days, from the time the appraisers' report is
 7 | filed, the condemnation is abandoned as to those tracts, and
 8 | judgment for costs, including the appraisers' fees together with
 9 | judgment in favor of the defendant for the reasonable expenses
 10 | incurred in defense of the action, shall be entered against the
 11 | plaintiff. After such payment is made by the plaintiff to the clerk of
 12 | the court, as provided in subsection (a), the proceedings as to those
 13 | tracts for which payment has been made can only be abandoned by
 14 | the mutual consent of the plaintiff and the parties interested in the
 15 | award.]

16 | [Sec. 3.—K.S.A. 2010 Supp. 26-508 is hereby amended to read as
 17 | follows: 26-508. (a) ~~Except as provided in subsection (c), if the~~
 18 | ~~plaintiff, or any defendant, is dissatisfied with the award of the~~
 19 | ~~appraisers, such party, within 30 days after the filing of the~~
 20 | ~~appraisers' report, may appeal from the award by filing a written~~
 21 | ~~notice of appeal with the clerk of the district court. The appeal~~
 22 | ~~shall be deemed perfected upon the filing of the notice of appeal. In~~
 23 | ~~the event any parties shall perfect an appeal, copies of such notice~~
 24 | ~~of appeal shall be mailed to all parties affected by such appeal,~~
 25 | ~~within seven days after the date of the perfection thereof. An appeal~~
 26 | ~~by the plaintiff or any defendant shall bring the issue of damages to~~
 27 | ~~all interests in the tract before the court for trial de novo. The~~
 28 | ~~appeal shall be docketed as a new civil action, the docket fee of a~~
 29 | ~~new court action shall be collected and the appeal shall be tried as~~
 30 | ~~any other civil action. The only issue to be determined therein shall~~
 31 | ~~be the compensation required by K.S.A. 26-513, and amendments~~
 32 | ~~thereto.~~

33 | (b) This section, as amended by this act, shall be construed and
 34 | applied prospectively, as well as retroactively to July 1, 2003, and
 35 | shall apply to all eminent domain proceedings pending on or
 36 | commenced after July 1, 2003.

37 | (c) (1) ~~The department of transportation through the secretary of~~
 38 | ~~transportation, as plaintiff, shall not have the right to appeal from the~~
 39 | ~~appraiser's award.~~

40 | (2) ~~This subsection shall be construed and applied prospectively,~~
 41 | ~~as well as retroactively to January 1, 2009, and shall apply to all~~
 42 | ~~eminent domain proceedings pending on or commenced after January~~
 43 | ~~1, 2009.]~~

1 | Sec. ~~2.~~ **[4.]** K.S.A. 2010 Supp. ~~[26-507, 26-508 and]~~ 26-510 is
2 | **[are]** hereby repealed.
3 | Sec. _____ ~~3.~~ **[5.]**
4 | This act shall take effect and be in force from and after its publication in the statu
5 | te book
6 |
7 |