

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 10:30 A.M. on February 3, 2006, in Room 123-S of the Capitol.

All members were present,

Donald Betts arrived, 10:35 a.m.
Terry Bruce arrived, 10:37 a.m.
Dwayne Umbarger arrived, 10:38 a.m.
Barbara Allen arrived, 10:45 a.m.
David Haley arrived, 10:50 a.m.
Derek Schmidt arrived, 10:53 a.m.

Committee staff present:

Mike Heim, Kansas Legislative Research Department
Helen Pedigo, Office of Revisor of Statutes
Karen Clowers, Committee Secretary

Conferees appearing before the committee:

Charles M. Benjamin, Sierra Club
John R. Hamilton, Attorney
Allen Cobb, Americans for Prosperity
Karl Peterjohn, Executive Director, Kansas Taxpayers Network
David & Ginny Pfrang, Farmer & Rancher
Sally Howard, Chief Counsel, Kansas Department of Transportation
Beccy Yocham, Senior Assistant City Attorney, City of Lenexa

Others attending:

See attached list.

The hearing continued on:

SB 323--Eminent domain; restricting government authority to take property
SB 446--Eminent domain; fairness in economic development act
SCR 1612--Eminent domain; proposed constitutional amendment restricting government authority to take property.
SCR 1616--Eminent domain; proposed constitutional amendment restricting government authority to take property

Note: Due to hearing several eminent domain bills at one time some testimony will appear to be out of place, several conferees opposed one bill and supported other bills at the same time, others chose to simply address the issue of eminent domain.

Charles Benjamin spoke in favor of using eminent domain to alleviate blight in cities but also expressed concern that its' use for the purpose of economic and industrial development will increase urban sprawl (Attachment 1).

John Hamilton spoke with regard to fairness in eminent domain law. While in support of eminent domain for economic development he felt that **SB 323** and **SCR 1616** were too restrictive (Attachment 2). He indicated a need for reform to current state law to include a higher level of scrutiny and compensation reform. Mr. Hamilton provided a proposal to amend K.S.A. 26-513 to provide for meaningful compensation reform. The Supreme Court has found a number of factors that result in the reduction of value to property to be non-compensable, examples being "view" or "loss of value of a business". The suggested amendment will allow a victim of condemnation to be made whole.

Alan Cobb spoke as a proponent of **SCR 1616** indicating his belief that property should be taken by government rarely and only for such purposes as roads, schools, parks, and hospitals (Attachment 3).

Karl Peterjohn spoke in support of **SCR 1616** since it would protect property rights (Attachment 4). His concern is that Kansans are vulnerable to developers who would abuse the use of eminent domain for

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 10:30 A.M. on February 3, 2006, in Room 123-S of the Capitol.

economic development.

David and Ginny Pfrang spoke in regard to the abuse of eminent domain and requested protection of individual property rights (Attachment 5).

James Bolden, Jr. expressed his opinion that property taken by eminent domain is unjust. (No written testimony).

Sally Howard spoke in regard to **SB 323** and **SCR 1612**. She was concerned with language in the bills which will prohibit the Kansas Department of Transportation (KDOT) from continuing its current practice of allowing farmers to use KDOT right of way in a manner that is not inconsistent with the agency's use of the land (Attachment 6). Often land is acquired long before it is needed for construction or expansion and many times enters into lease agreements with farmers under which they can continue using the land. Current wording in **SB 323** and **SCR 1612** would prohibit continuation of this practice. Ms. Howard suggested adopting language in **SB 446** which would allow KDOT to continue its current practices.

Becky Yocham spoke in opposition to **SB 323**, **SCR 1612** and **SCR 1616** and in support of **SB 446** (Attachment 7). The city of Lenexa supports the enactment of procedural safeguards to ensure that the use of eminent domain for economic development is undertaken only after careful and deliberate consideration but opposes any legislation which would completely or effectively abolish this important tool.

Written testimony in support of **SB 398** was submitted by:
James and Amy Bartle (Attachment 8)

Written testimony in support of **SB 446** was submitted by:
Gary E. Rebenstorf, Director of Law and City Attorney, Wichita, KS (Attachment 9)

Written testimony in support of **SB 323**, **SCR 1612** and in opposition to **SB 446** was submitted by:
Dana Hoffman, Producer Policy Specialist, Kansas Association of Wheat Growers (Attachment 10)

Written testimony in opposition to **SB 323** and **SCR 1612** was submitted by:
Chris Wilson, Executive Director, Kansas Building Industry Association (Attachment 11)

Written testimony in general terms was submitted by:
Chris Wright, Sedgwick County, KS (Attachment 12)

Following questions of the conferees, the Chairman indicated that he does not intend for the committee to take immediate action on any of these bills with the exception of **SB 398**. He asked Allie Devine, Kansas Livestock Association and Sandy Jacquot, League of Municipalities to facilitate a gathering of the interested parties together to possibly work out a proposal in the form of a compromise among the competing interests. The meetings are to be open to anyone interested. Senator Vratil expressed that in his experience, the solutions worked out by the parties themselves are more agreeable than solutions imposed by the legislature. The group will keep the Chairman informed of progress.

Senator Schmidt briefed the committee on his intentions for handling of this issue on the floor. There are two committees dealing with different aspects of the eminent domain issue, his preference for floor action would be to have both committees to complete their work and report results and have a single day in which to debate the eminent domain bills. This will give Senators a full picture with respect to what is before them allowing them to know the entirety of the list of vehicles that will be moving.

The Chairman closed the hearing on **SB 323**, **SB 398**, **SB 446**, and **SCR 1612**.

The meeting adjourned at 11:37 a.m. The next scheduled meeting is February 6, 2006.