

MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairperson Nick Jordan at 8:00 A.M. on February 8, 2006 in Room 123-S of the Capitol.

All members were present.

Committee staff present:

Helen Pedigo, Revisor of Statutes
Jackie Lunn, Committee Secretary
Audrey Dunkel-Legislative Research

Conferees appearing before the committee:

Don Moler-Kansas League of Municipalities
Blake Schreck-Lenexa Chamber of Commerce
Bill Yanek-Kansas Association of Relators
Doug Kinsinger-Topeka Chamber of Commerce
Allie Devine-Kansas Livestock Association
Terry Holdren-Kansas Farm Bureau

Others attending:

See attached list.

Chairperson Jordan opened the meeting with the continuation of the hearing on **SB 360--Eminent domain; prohibition against tax incentive use**. Chairperson Jordan introduced Don Moler representing the Kansas League of Municipalities to give his testimony as an opponent to **SB 360**. Mr. Moler offered written testimony. (Attachment 1) Mr. Moler gave a brief review of his written testimony stating the League of Municipalities feels that the bill is simply a device to make any use of eminent domain for economic development purposes unattractive as a matter of public policy, and therefore; effectively end this practice in Kansas. In closing Mr. Moler stated **SB 360** clearly would have a chilling effect on the ability of cities and our citizens, to utilize this power for effective economic development projects. He urged the Committee to reject **SB 360**.

Upon the completion of Mr. Moler's testimony there was discussion with Mr. Moler regarding the Federal bills pending in the U.S. Senate regarding eminent domain. With no further questions or discussion, Chairperson Jordan closed the hearing on **SB 360**.

Chairperson Jordan opened the hearing on **SB 493--Economic development; eminent domain; procedure; compensation** by introducing Helen Pedigo from the Revisors office to give a review of the bill. Ms. Pedigo reviewed sections 1 through 6 of the bill. Following Ms. Pedigo's review there were several questions from Committee members regarding rental property and if the property owner was compensated for the loss in income also. The Committee was told there is wording in the bill which seems to cover this issue.

Upon the completion of Ms. Pedigo's review of the bill, Chairperson Jordan introduced Don Moler representing the Kansas League of Municipalities to testify as a proponent on **SB 493**. Mr. Moler presented written testimony (Attachment 2) Mr. Moler urged the Committee to pass the bill stating the Kansas League of Municipalities feels the bill strengthens private property rights and at the same time protects eminent domain for economic development purposes. He stated eminent domain for economic purposes is not something that happens very often.

Upon completion of Mr. Moler's testimony, Chairperson Jordan introduced Blake Schreck representing the Lenexa Chamber to give his testimony as a proponent of **SB 493**. Mr. Schreck presented written testimony. (Attachment 3) Mr Schreck stated the Lenexa Chamber was in support of **SB 493** which creates new process-based protections and limitations on the exercise of eminent domain for economic development purposes. They believe efforts to tighten the use of eminent domain should focus on the process as **SB 493** does rather than the type of property being impacted. Process based proposals like **SB 493** allow communities the flexibility to continue to judge potential opportunities on a case by case basis; leaving decisions as to the exercise of those powers primarily with locally-elected officials and their constituents who can best weigh the values, needs, desires and circumstances of their individual communities. In closing, Mr. Schreck urged

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the Committee to support **SB 493**.

Upon completion of Mr. Schreck's testimony, Chairperson Jordan introduced Bill Yanek representing the Kansas Association of Relators to testify as a proponent on **SB 493**. Mr. Yanek offered written testimony. (Attachment 4) Mr. Yanek stated entities using eminent domain for economic development should be required to show the condemnation serves an important state interest and that the condemnation is at least substantially related to serving that interest. He stated now is not the time for Kansas to cede economic development opportunities to other states because of a ban on the use of eminent domain for economic development. In closing, he stated the Kansas Association of Relators look forward to working with the Kansas Legislature and eminent domain state holders in crafting legislation that will balance Kansas' need for economic development with protection of private property rights.

Chairperson Jordan introduced Doug Kinsinger representing the Greater Topeka Chamber of Commerce to give his testimony as a proponent of **SB 493**. Mr. Kinsinger presented written testimony (Attachment 5) Mr. Kinsinger cited several instances where eminent domain was needed as a last resort for economic development. He stated **SB 493** offers language requiring heightened standards for local governments' use of the power of eminent domain. The bill requires compensation above market value on sliding scale, the preparation of economic development plan and findings that the project benefits the entire community. It limits the scope and size of the project reasonable to accomplish the purpose intended. Additionally public hearings are required and a 2/3s majority vote of the governing body is required for approval of eminent domain use and the adoption of the project plan. The bill also requires the courts to determine the validity of the taking. The Greater Topeka Chamber believes these are reasonable additions to current eminent domain law that will provide property owners enhanced protection and fair financial compensation by recognizing the property owners length of ownership. In closing, Mr. Kinsinger asked the Committee to remain committed to Kansas economic growth and support **SB 493**.

Written only testimony as proponents of the bill were offered by: Michael A. Boehm, Mayor of Lenexa. (Attachment 6); Barbara Kasoff representing Women Impacting Public Policy (Attachment 7); Nancy Zurbuchen representing Kansas City Council of Women Business Owners (Attachment 8).

Chairperson Jordan announced to the Committee they would next hear from the opponents of **SB 493** and introduced Allie Devine with the Kansas Livestock Association to give her testimony as an opponent to the bill. Ms. Devine offered written testimony. (Attachment 9) Ms. Devine stated KLA has a long standing history of protecting private property interests. The issues of eminent domain are very complex and raise a number of legal, social, and economic issues and they believe reform is needed. In closing, she stated without the Constitutional protection or the removal of a legal presumption of validity of condemning authority actions, there is little substantive legal protection for the private property holder.

Chairperson Jordan introduced Terry Holdren with the Kansas Farm Bureau to give his testimony as a proponent of **SB 493**. Mr. Holdren offered written testimony (Attachment 10) Mr. Holdren stated **SB 493** offers additional procedural protections for landowners. While the requirements of a project plan, public hearing and 2/3 majority are important they are not the substantive changes in eminent domain law that his members, and many Americans have voiced overwhelming support for. Mr. Holdren stated in November 2005, American Farm Bureau Federation completed a public opinion poll of 1,076 likely voters. Respondents to that poll were asked to rank their support for government seizure of private property. 65% of the respondents supported condemnation for public use on roads, electrical utilities, or pipelines for natural gas. In the same question, 85% of the respondents opposed condemnation for private economic development such as a shopping mall, housing complex or office park, to increase property tax revenue. Their significant objection to the bill centers on the new Section 1 which creates a presumption that eminent domain used for economic development is an acceptable use of the power in Kansas. In closing, Mr. Holdren stated they were willing to work for common ground.

Upon completion of Mr. Holdren's testimony there was discussion with the Committee. Senator Emler discussed the survey and asked for detailed information which Mr. Holdren stated he would get to him. The discussion moved to Ms. Devine and language she was opposed to in **SB 493**. Senator Reitz joined the discussion and discussed the language "clear and convincing". Senator Schodorf asked why the bill was dual

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referred and what happens and why. Chairperson Jordan stated this bill was dual referred because there are legal questions as well as economic development questions. The Committee will deal with the economic side of the bill and Judiciary will deal with the legal side of the bill. If the Committee passes it out then it goes to Judiciary and the Chair would hope the legislation would be a result of both Committee's work. The discussion continued regarding the use of agricultural property for eminent domain; if farm land should be protected. Mr. Holdren and Ms. Devine were in agreement that the issue should be a property owners issue and not an urban renewal or farmland issue. The discussion continued with private property on the outskirts of the city limits. Mr. Kinsinger entered the discussion regarding the property around any property taken by eminent domain. Senator Brownlee asked if language needed to be added to clean up the bill to prevent public takings cutting a land owner's access to his land off. Chairperson Jordan stated bill should contain wording, that the Court would expedite the hearing so it doesn't stay in court for months and months.

With no further questions or discussion, Chairperson Jordan adjourned the meeting at 9:10 a.m. The next scheduled meeting is tomorrow, Thursday, February 9, 2006 at 8:00 a.m. in room 123S.