

## House Concurrent Resolution No. 5025

By Representatives F. Miller, Goico, Grange, Huebert, Huy, Kiegerl,  
Knox, Judy Morrison, Oharah, Peck and Pilcher-Cook

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10 A PROPOSITION to amend article 15 of the constitution of the state of  
11 Kansas by adding a new section thereto, concerning eminent domain.  
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13 WHEREAS, The constitution of the United States clearly states, in  
14 amendment 5 that “No person shall be...deprived of life, liberty, or prop-  
15 erty, without due process of law; nor shall private property be taken for  
16 public use, without just compensation.” The intent of this amendment  
17 clearly provides that the taking of privately owned real property is in-  
18 tended to apply only to public use projects; and

19 WHEREAS, There is currently no provision in the Kansas constitution  
20 prohibiting state or local government from taking private real property  
21 except for public use, which has resulted in the abusive taking of real  
22 property in many communities in Kansas: Now, therefore,

23 *Be it resolved by the Legislature of the State of Kansas, two-thirds of the*  
24 *members elected (or appointed) and qualified to the House of Repre-*  
25 *sentatives and two-thirds of the members elected (or appointed) and*  
26 *qualified to the Senate concurring therein:*

27 Section 1. The following proposition to amend the constitution of the  
28 state of Kansas shall be submitted to the qualified electors of the state  
29 for their approval or rejection: Article 15 of the constitution of the state  
30 of Kansas is amended by adding a new section thereto to read as follows:

31 “§ 17. **Eminent Domain.** (a) A fee simple title to real prop-  
32 erty shall not be taken for use by private commercial enterprise, for  
33 economic development, or for any other private use, except with  
34 the consent of the owner. A fee simple title to private real property  
35 may be taken only when necessary for the possession, occupation  
36 or enjoyment of the land by the public at large, or by public agen-  
37 cies, or to acquire real property to eliminate an immediate threat  
38 to public health or safety. This provision shall, in no way, restrict  
39 existing police powers. A fee simple title to private real property  
40 shall not be taken from one owner and transferred to another, on  
41 the grounds that the public will benefit from a more profitable  
42 private use.

43 (b) Whenever an attempt is made to take a fee simple title to

1 private real property for a use alleged to be public, the entity pro-  
2 posing the taking shall bring an action to determine whether the  
3 contemplated use is a public use, and such issue shall be determined  
4 by the court. The entity proposing the taking shall bear the burden  
5 of proof to show the court by clear and convincing evidence that  
6 the taking of the real property is for a public use.

7 (c) Except for real property taken to eliminate an immediate  
8 threat to public health or safety, when a fee simple title to private  
9 real property is taken, just compensation shall not be less than 150%  
10 of the highest yearly appraised value of the real property during the  
11 preceding five-year period. Just compensation, when a fee simple  
12 title to private real property is taken to eliminate an immediate  
13 threat to public health or safety, shall be determined by the court.

14 (d) A fee simple title to private real property taken through  
15 eminent domain must be owned and used by the taking entity for  
16 a minimum of seven years. If the real property is not used within  
17 seven years, the real property, or a portion thereof, shall be sold  
18 back to the owner, from whom the private real property was taken,  
19 at the compensation determined at the taking, or prorated for any  
20 portion thereof. If the owner, from whom the private real property  
21 was taken, does not purchase fee simple title to the real property,  
22 then the taking entity may sell, or otherwise transfer, such real prop-  
23 erty to a third party.”

24 Sec. 2. The following statement shall be printed on the ballot with  
25 the amendment as a whole:

26 *“Explanatory statement.* There is currently no constitutional pro-  
27 vision prohibiting state or local government from taking private  
28 real property except for public use, and there is no definition of  
29 “public use”.

30 A vote for this proposition would amend the Kansas constitution to  
31 prohibit state and local governments from taking private real  
32 property, except for public use, and would require that the owner  
33 of any real property taken for public use be paid just compen-  
34 sation. Private real property may be taken to eliminate an im-  
35 mediate threat to public health or safety, but in this case, the  
36 court shall determine just compensation. If the taking entity  
37 wishes to sell the real property prior to the end of seven years,  
38 the real property must be offered to the owner, from whom the  
39 private real property was taken, at the just compensation deter-  
40 mined at the time of the taking.

41 A vote against this proposition would not amend the constitution.”

42 Sec. 3. This resolution, if approved by two-thirds of the members  
43 elected (or appointed) and qualified to the House of Representatives, and

1 two-thirds of the members elected (or appointed) and qualified to the  
2 Senate shall be entered on the journals, together with the yeas and nays.  
3 The secretary of state shall cause this resolution to be published as pro-  
4 vided by law and shall cause the proposed amendment to be submitted  
5 to the electors of the state at the general election in November in the  
6 year 2006.