

HOUSE BILL No. 2543

By Representatives Holland, Lane and Mah

10-7

9 AN ACT concerning eminent domain; prohibiting the use of eminent
10 domain for nonpublic use.

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

13 Section 1. In view of the decision announced by the United States
14 supreme court on June 23, 2005, in *Kelo et al. v. City of New London et*
15 *al.*, interpreting the extent of the power of government to take property
16 for public use as described in the fifth amendment to the United States
17 constitution and providing that individual states may restrict the exercise
18 of that power, the legislature hereby declares that the purpose of this act
19 is to ensure that the state of Kansas, any agency or political or taxing
20 subdivision thereof, vested with the power of eminent domain may not
21 use such power of eminent domain to take the private property of any
22 person for the private use of another person except under the limited
23 circumstances set out in this act.

24 Sec. 2. (a) Except as otherwise provided in subsection (b), when-
25 ever the governing body of a municipality deems it necessary or expedient
26 for the carrying out and full exercise of any power granted by the appli-
27 cable provisions of this title or any other applicable provision of law, such
28 municipality shall have full power and authority to acquire by purchase
29 the necessary lands or rights, easements, or interests therein, or, for the
30 purposes for which private property may be acquired by condemnation,
31 may proceed to condemn the same in the manner provided by law for
32 the purpose of the taking of lands or the acquiring of interests therein
33 for the uses for which private property may be taken, and such proceed-
34 ings shall be governed in every respect by the general laws of this state
35 pertaining thereto or by the provisions on the subject contained in this
36 article when the same are followed.

37 (b) Notwithstanding any other provision of law, a municipality may
38 not condemn property for the purposes of:

39 (1) Private retail, office, commercial, industrial or residential
40 development;

41 (2) primarily for enhancement of tax revenue; or

42 (3) for transfer to a person, nongovernmental entity, public-private
43 partnership, corporation or other business entity.

1 The provisions of this subsection shall not apply to the use of eminent
2 domain by any municipality, housing authority or other public entity
3 based upon a finding of a blighted area, as such term is defined in K.S.A.
4 12-1770a, and amendments thereto, or any urban renewal plan pursuant
5 to the urban renewal law and amendments thereto. In all cases, just com-
6 pensation shall be made to the owner.

7 (c) No provision of this section shall limit the exercise of eminent
8 domain by or for the benefit of public utilities or other entities engaged
9 in the generation, transmission or distribution of telephone, gas, electric-
10 ity, water, sewer or other utility products or services.

11 (d) No provision of this section shall be interpreted to prohibit a
12 municipality, or the governing body thereof, from exercising the power
13 of eminent domain for the purpose of constructing, maintaining or op-
14 erating streets and roadways, government buildings or park and recrea-
15 tion facilities.

16 (e) In the event that property condemned pursuant to subsections (a)
17 and (b) is not ever used for the purpose or purposes for which such
18 property was condemned or for some other public use and such property
19 is to be sold, such property shall be first offered for sale to the owner of
20 such property at the time such property was condemned, or the known
21 or ascertainable heirs or assigns of such owner, at the price which was
22 paid for the property at the time of condemnation. If the offer shall not
23 be accepted within 90 days from the date it is made, the property may
24 be sold to any other person, but only at public sale after legal notice is
25 given.

26 (f) For the purposes of this section, the term “municipality” shall have
27 the meaning ascribed to it in K.S.A. 12-205 and amendments thereto.

28 Sec. 3. (a) Any county and municipality may condemn lands for
29 public building sites or additions thereto, or for enlargements of sites
30 already owned, or for public roads or streets or alleys, or for material for
31 the construction of public roads or streets or for any other public use.

32 (b) Notwithstanding any other provision of law, a county or munic-
33 ipality may not condemn property for the purposes of:

34 (1) Private retail, office, commercial, industrial or residential
35 development;

36 (2) primarily for enhancement of tax revenue; or

37 (3) for transfer to a person, nongovernmental entity, public-private
38 partnership, corporation or other business entity.

39 The provisions of this section shall not apply to the use of eminent
40 domain by any county, municipality, housing authority or other public
41 entity based upon a finding of a blighted area, as such term is defined in
42 K.S.A. 12-1770a, and amendments thereto, or any urban renewal plan
43 pursuant to the urban renewal law and amendments thereto. In all cases,

- 1 just compensation shall be made to the owner.
- 2 (c) No provision of this section shall limit the exercise of eminent
3 domain by or for the benefit of public utilities or other entities engaged
4 in the generation, transmission or distribution of telephone, gas, electric-
5 ity, water, sewer or other utility products or services.
- 6 (d) No provision of this section shall be interpreted to prohibit a
7 municipality, or the governing body thereof, from exercising the power
8 of eminent domain for the purpose of constructing, maintaining or op-
9 erating streets and roadways, government buildings or park and recrea-
10 tion facilities.
- 11 (e) In the event that property condemned pursuant to subsections (a)
12 and (b) is not ever used for the purpose or purposes for which such
13 property was condemned or for some other public use and such property
14 is to be sold, such property shall be first offered for sale to the owner of
15 such property at the time such property was condemned, or the known
16 or ascertainable heirs or assigns of such owner, at the price which was
17 paid for the property at the time of condemnation. If the offer shall not
18 be accepted within 90 days from the date it is made, the property may
19 be sold to any other person, but only at public sale after legal notice is
20 given.
- 21 (f) For the purposes of this section, the term “municipality” shall have
22 the meaning ascribed to it in K.S.A. 12-205 and amendments thereto.
- 23 Sec. 4. (a) Neither the state of Kansas, nor any agency thereof, nor
24 any agency, corporation, district, board or other entity organized by or
25 under the control of any municipality or county in the state and vested
26 by law with the power of eminent domain may condemn property for the
27 purposes of nongovernmental retail, office, commercial, industrial or res-
28 idential development or use.
- 29 The provisions of this subsection shall not apply to the use of eminent
30 domain by any county, municipality, housing authority or other public
31 entity based upon a finding of a blighted area, as such term is defined in
32 K.S.A. 12-1770a, and amendments thereto, or any urban renewal plan
33 pursuant to the urban renewal law and amendments thereto. In all cases,
34 just compensation shall be made to the owner.
- 35 (b) No provision of this section shall limit the exercise of eminent
36 domain by or for the benefit of public utilities or other entities engaged
37 in the generation, transmission or distribution of telephone, gas, electric-
38 ity, water, sewer or other utility products or services.
- 39 (c) No provision of this section shall be interpreted to prohibit a mu-
40 nicipality, or the governing body thereof, from exercising the power of
41 eminent domain for the purpose of constructing, maintaining or operating
42 streets and roadways, government buildings or park and recreation
43 facilities.

1 (d) In the event that property condemned pursuant to subsections
2 (a) and (b) is not ever used for the purpose or purposes for which such
3 property was condemned or for some other public use and such property
4 is to be sold, such property shall be first offered for sale to the owner of
5 such property at the time such property was condemned, or the known
6 or ascertainable heirs or assigns of such owner, at the price which was
7 paid for the property at the time of condemnation. If the offer shall not
8 be accepted within 90 days from the date it is made, the property may
9 be sold to any other person, but only at public sale after legal notice is
10 given.

11 (e) For the purposes of this section, the term "state agency" shall
12 have the meaning ascribed to it in K.S.A. 75-3044 and amendments
13 thereto.

14 Sec. 5. This act is declaratory of existing law and shall apply to any
15 action for condemnation pending on the effective date of this act.

16 Sec. 6. If any provision of this act or the application thereof to any
17 person or circumstance is held invalid, the invalidity does not affect other
18 provisions or applications of the act which can be given effect without
19 the invalid provision or application, and to this end the provisions of this
20 act are severable.

21 Sec. 7. This act shall take effect and be in force from and after its
22 publication in the statute book.