

SENATE BILL No. 446

By Committee on Judiciary

1-25

9 AN ACT concerning eminent domain; relating to economic develop-
10 ment; enacting the fairness in economic development act.

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

13 Section 1. This act shall be known and may be cited as the fairness
14 in economic development act and shall apply to all units of government
15 having the power of eminent domain as utilized in the manner set forth
16 herein.

17 Sec. 2. (a) Private property shall not be taken except for public use
18 and private property shall not be taken without just compensation.

19 (b) The procedures contained herein shall apply to all uses of eminent
20 domain for economic development purposes and shall be in addition and
21 supplemental to the procedures for exercising eminent domain as set
22 forth in article 5 of chapter 26 of the Kansas statutes annotated, and
23 amendments thereto, except as otherwise provided in subsection (c) of
24 this section. The use of eminent domain for economic development pur-
25 poses in compliance with the provisions of this act shall be deemed a
26 public use.

27 (c) The taking of private property where the primary purpose is with
28 the intent to or in anticipation of selling, leasing or otherwise transferring
29 such property to any other private entity shall be presumed to be for
30 economic development. Where the primary purpose is something other
31 than the anticipation of selling, leasing or otherwise transferring such
32 property to any other private entity, the taking shall not be considered to
33 be for economic development, and the procedures herein shall not apply.
34 The elimination of slum and blight shall not be considered economic
35 development. The use of eminent domain for public improvement pro-
36 jects shall not be considered economic development and the procedures
37 herein shall not apply. Public improvement projects shall include the fol-
38 lowing, but such list shall not be exclusive:

39 (1) Transportation projects, including but not limited to parking fa-
40 cilities, railroads, airports, or public streets, bridges and highways, in-
41 cluding sidewalks, street lights, traffic signalization and all related infra-
42 structure appurtenances;

43 (2) water supply, wastewater, stormwater, flood control or drainage

1 projects;

2 (3) public buildings;

3 (4) hospitals;

4 (5) community buildings;

5 (6) parks and recreation facilities, including park land and golf course
6 land;

7 (7) the provision of utility services;

8 (8) waste disposal projects; or

9 (9) libraries, museums and related infrastructure.

10 Sec. 3. (a) Where owner-occupied residential property is taken for
11 economic development purposes, and operating farm land located outside
12 of a city is taken for economic development purposes, just compensation
13 shall be established as 125% of fair market value as defined in K.S.A. 26-
14 513, and amendments thereto.

15 (b) For any economic development project for which property is an-
16 ticipated to be acquired by eminent domain, the condemning authority
17 shall prepare an economic development project plan. Such economic de-
18 velopment plan shall contain at least the following findings:

19 (1) A finding showing how the proposed project will generally benefit
20 the community as a whole;

21 (2) a finding showing how the proposed project will economically
22 benefit the community; and

23 (3) a finding that the size and scope of the project is reasonably nec-
24 essary to accomplish the purpose of the proposed project.

25 (c) No economic development project plan shall be approved unless
26 a public hearing has been conducted concerning the proposed project
27 plan. The governing body of the condemning authority shall adopt a res-
28 olution fixing the date for the public hearing. The date fixed for the public
29 hearing shall be not less than 30 nor more than 70 days following the date
30 of the adoption of the resolution fixing the date of the hearing. Copies of
31 the resolution shall be sent by certified mail, return receipt requested, to
32 each owner and occupant of land within the proposed economic devel-
33 opment project area, whose address is known or can, with reasonable
34 diligence, be ascertained, not more than 10 days following the date of the
35 adoption of the resolution. The resolution shall be published once in a
36 newspaper generally circulated in the proposed economic development
37 project area. If no newspapers are circulated in the proposed economic
38 project area, then the resolution shall be published once in a newspaper
39 generally circulated in the county where the lands are situated. The res-
40 olution shall be published not less than one week and not more than two
41 weeks preceding the date fixed for the public hearing. A sketch clearly
42 delineating the area in sufficient detail to advise the reader of the partic-
43 ular land proposed to be included within the economic development pro-

1 ject area shall be published with the resolution. No defect in any notice
2 or in any service thereof shall invalidate any proceeding. Following the
3 public hearing, a $\frac{2}{3}$ majority vote of the members-elect of the governing
4 body is required to adopt the project plan.

5 (d) After approval of an economic development project, a $\frac{2}{3}$ majority
6 vote of the members-elect of the governing body is required to authorize
7 the use of eminent domain to acquire land for the economic development
8 project. Eminent domain shall not be authorized without a finding that
9 the city or developer, after good faith negotiations, was unable to acquire
10 the property.

11 (e) In an eminent domain proceeding for economic development
12 purposes, in addition to the findings required by K.S.A. 26-504, and
13 amendments thereto, a court shall determine whether the decision to take
14 the property was unreasonable, arbitrary or capricious, or made fraudu-
15 lently or in bad faith.

16 Sec. 4. The provisions of this act shall not apply to the exercise of
17 eminent domain, pursuant to the provisions of K.S.A. 12-1773, and
18 amendments thereto, within a redevelopment district created pursuant
19 to K.S.A. 12-1771, and amendments thereto, if such redevelopment dis-
20 trict was created prior to the effective date of this act.

21 Sec. 5. This act shall take effect and be in force from and after its
22 publication in the statute book.