

*As Amended by Senate Committee*

Session of 2006

**SENATE BILL No. 493**

By Committee on Commerce

2-1

10 AN ACT concerning eminent domain; relating to economic develop-  
11 ment; procedure; compensation; amending K.S.A. 26-513 and repeal-  
12 ing the existing section.

13

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

15 New Section 1. **(a)** The taking of private property where the primary  
16 purpose is with the intent to or in anticipation of selling, leasing or oth-  
17 erwise transferring such property to any other private entity shall be pre-  
18 sumed to be for economic development. Where the primary purpose is  
19 something other than the anticipation of selling, leasing or otherwise  
20 transferring such property to any other private entity, the taking shall not  
21 be considered to be for economic development, and the procedures  
22 herein shall not apply. The elimination of slum and blight shall not be  
23 considered economic development. The use of eminent domain for public  
24 improvement projects shall not be considered economic development and  
25 the procedures herein shall not apply. **(b)** Public improvement projects  
26 shall include the following, but such list shall not be exclusive:

27 ~~(a)~~ **(1)** Transportation projects, including but not limited to parking  
28 facilities, railroads, airports, or public streets, bridges and highways, in-  
29 cluding sidewalks, street lights, traffic signalization and all related infra-  
30 structure appurtenances;

31 ~~(b)~~ **(2)** water supply, wastewater, stormwater, flood control or drain-  
32 age projects;

33 ~~(c)~~ **(3)** public buildings;

34 ~~(d)~~ **(4)** hospitals;

35 ~~(e)~~ **(5)** community buildings;

36 ~~(f)~~ **(6)** parks and recreation facilities, including park land and golf  
37 course land;

38 ~~(g)~~ **(7)** the provision of utility services;

39 ~~(h)~~ **(8)** waste disposal projects; or

40 ~~(i)~~ **(9)** libraries, museums and related infrastructure.

41 ~~(j)~~ **(c)** This section shall be in addition and supplemental to the em-  
42 inent domain procedure act.

43 New Sec. 2. **(a)** *Only the state of Kansas, and county and city*

1 ***governments shall be authorized to use eminent domain for economic development.***  
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3 (b) For any economic development project for which property is anticipated to be acquired by eminent domain, the condemning authority shall prepare an economic development project plan, including financing. Such economic development plan shall contain at least the following findings:  
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8 (1) A finding showing how the proposed project will generally benefit the community as a whole;  
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10 (2) a finding showing how the proposed project will economically benefit the community; and  
11

12 (3) a finding that the size and scope of the project is reasonably necessary to accomplish the purpose of the proposed project.  
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14 (b) No economic development project plan shall be approved unless a public hearing has been conducted concerning the proposed project plan. The governing body of the condemning authority shall adopt a resolution fixing the date for the public hearing. The date fixed for the public hearing shall be not less than 30 nor more than 70 days following the date of the adoption of the resolution fixing the date of the hearing. Copies of the resolution shall be sent by certified mail, return receipt requested, to each owner and occupant of land within the proposed economic development project area, whose address is known or can, with reasonable diligence, be ascertained, not more than 10 days following the date of the adoption of the resolution. The resolution shall be published once in a newspaper generally circulated in the proposed economic development project area. If no newspapers are circulated in the proposed economic project area, then the resolution shall be published once in a newspaper generally circulated in the county where the lands are situated. The resolution shall be published not less than one week and not more than two weeks preceding the date fixed for the public hearing. A sketch clearly delineating the area in sufficient detail to advise the reader of the particular land proposed to be included within the economic development project area shall be published with the resolution. No defect in any notice or in any service thereof shall invalidate any proceeding. Following the public hearing, a  $\frac{2}{3}$  majority vote of the members-elect of the governing body is required to adopt the project plan.  
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37 (c) After approval of an economic development project, a  $\frac{2}{3}$  majority vote of the members-elect of the governing body is required to authorize the use of eminent domain to acquire land for the economic development project. Eminent domain shall not be authorized without a finding that the city or developer, after good faith negotiations, was unable to acquire the property. ***The approval process, from initial hearing to approval of eminent domain, shall be limited to three years.***  
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1 (d) In an eminent domain proceeding for economic development  
2 purposes, in addition to the findings required by K.S.A. 26-504, and  
3 amendments thereto, a court shall determine whether the decision to take  
4 the property was unreasonable, arbitrary or capricious, or made fraudu-  
5 lently or in bad faith. **The court shall assign the case for hearing at**  
6 **the earliest practicable date and cause the case to be in every way**  
7 **expedited.**

8 (e) This section shall be in addition and supplemental to the eminent  
9 domain procedure act.

10 New Sec. 3. (a) The provisions of this act shall not apply to the ex-  
11 ercise of eminent domain, pursuant to the provisions of K.S.A. 12-1773,  
12 and amendments thereto, within a redevelopment district created pur-  
13 suant to K.S.A. 12-1771, and amendments thereto, if such redevelopment  
14 district was created prior to the effective date of this act.

15 (b) This section shall be in addition and supplemental to the eminent  
16 domain procedure act.

17 Sec. 4. K.S.A. 26-513 is hereby amended to read as follows: 26-513.

18 (a) *Necessity.* Private property shall not be taken or damaged for public  
19 use without just compensation.

20 (b) *Taking entire tract.* (1) *Except when property is taken for eco-*  
21 *nomical development, if the entire tract of land or interest in such land is*  
22 *taken, the measure of compensation is the fair market value of the prop-*  
23 *erty or interest at the time of the taking.*

24 (2) *When an entire tract of property is taken for economic develop-*  
25 *ment, the measure of compensation shall be calculated as follows: (A)*  
26 *When the owner from whom the land is being taken has owned the prop-*  
27 *erty less than five years, compensation shall be 125% of the fair market*  
28 *value of the property or interest at the time of the taking;*

29 (B) *when the owner from whom the land is being taken has owned*  
30 *the property at least five years, but less than 10 years, compensation shall*  
31 *be 150% of the fair market value of the property or interest at the time*  
32 *of the taking;*

33 (C) *When the owner from whom the land is being taken has owned*  
34 *the property at least 10 years, but less than 15 years, compensation shall*  
35 *be 175% of the fair market value of the property or interest at the time*  
36 *of the taking; or*

37 (D) *when the owner from whom the land is being taken has owned*  
38 *the property at least 15 years, compensation shall be 200% of the fair*  
39 *market value of the property or interest at the time of the taking.*

40 (c) *Partial taking.* (1) *Except when property is taken for economic*  
41 *development, if only a part of a tract of land or interest is taken, the*  
42 *compensation and measure of damages is the difference between the fair*  
43 *market value of the entire property or interest immediately before the*

1 taking, and the value of that portion of the tract or interest remaining  
2 immediately after the taking.

3 (2) *When only a part of a tract of property or interest is taken for*  
4 *economic development, the compensation and measure of damages shall*  
5 *be the difference between the compensation determined in subsection (a)*  
6 *of this section for the entire property or interest and the fair market value*  
7 *of that portion of the tract or interest remaining immediately after the*  
8 *taking.*

9 (d) *Factors to be considered.* In ascertaining the amount of compen-  
10 sation and damages, the following nonexclusive list of factors shall be  
11 considered if such factors are shown to exist. Such factors are not to be  
12 considered as separate items of damages, but are to be considered only  
13 as they affect the total compensation and damage under the provisions  
14 of subsections (b) and (c) of this section. Such factors are:

15 (1) The most advantageous use to which the property is reasonably  
16 adaptable.

17 (2) Access to the property remaining.

18 (3) Appearance of the property remaining, if appearance is an ele-  
19 ment of value in connection with any use for which the property is rea-  
20 sonably adaptable.

21 (4) Productivity, convenience, use to be made of the property taken,  
22 or use of the property remaining.

23 (5) View, ventilation and light, to the extent that they are beneficial  
24 attributes to the use of which the remaining property is devoted or to  
25 which it is reasonably adaptable.

26 (6) Severance or division of a tract, whether the severance is initial  
27 or is in aggravation of a previous severance; changes of grade and loss or  
28 impairment of access by means of underpass or overpass incidental to  
29 changing the character or design of an existing improvement being con-  
30 sidered as in aggravation of a previous severance, if in connection with  
31 the taking of additional land and needed to make the change in the  
32 improvement.

33 (7) Loss of trees and shrubbery to the extent that they affect the value  
34 of the land taken, and to the extent that their loss impairs the value of  
35 the land remaining.

36 (8) Cost of new fences or loss of fences and the cost of replacing  
37 them with fences of like quality, to the extent that such loss affects the  
38 value of the property remaining.

39 (9) Destruction of a legal nonconforming use.

40 (10) Damage to property abutting on a right-of-way due to change of  
41 grade where accompanied by a taking of land.

42 (11) Proximity of new improvement to improvements remaining on  
43 condemnee's land.

- 1     (12) Loss of or damage to growing crops.
- 2     (13) That the property could be or had been adapted to a use which
- 3     was profitably carried on.
- 4     (14) Cost of new drains or loss of drains and the cost of replacing
- 5     them with drains of like quality, to the extent that such loss affects the
- 6     value of the property remaining.
- 7     (15) Cost of new private roads or passageways or loss of private roads
- 8     or passageways and the cost of replacing them with private roads or pas-
- 9     sageways of like quality, to the extent that such loss affects the value of
- 10    the property remaining.
- 11    (e) *Fair market value*. “Fair market value” means the amount in
- 12    terms of money that a well informed buyer is justified in paying and a
- 13    well informed seller is justified in accepting for property in an open and
- 14    competitive market, assuming that the parties are acting without undue
- 15    compulsion. The fair market value shall be determined by use of the
- 16    comparable sales, cost or capitalization of income appraisal methods or
- 17    any combination of such methods.
- 18    Sec. 5. K.S.A. 26-513 is hereby repealed.
- 19    Sec. 6. This act shall take effect and be in force from and after its
- 20    publication in the statute book.