

SESSION OF 2006

**CONFERENCE COMMITTEE REPORT BRIEF  
SUBSTITUTE FOR SENATE BILL NO. 323**

As Agreed to May 5, 2006

**Brief\***

Sub. for SB 323 would prohibit the use of eminent domain for economic development purposes unless the Legislature approves the taking; change certain eminent domain procedures; and require surveys for lands to be taken through the exercise of eminent domain be performed by a licensed land surveyor or an engineer competent to conduct land surveys.

**Takings for Benefit of a Private Entity Prohibition—Exceptions**

The bill would provide that on and after July 1, 2007, the taking of private property by eminent domain for the purpose of selling, leasing or transferring it to another private entity including takings under the tax increment financing law would not be permitted unless the taking meets any of the following:

- The property is deemed excess real property that was taken lawfully and incidental to the acquisition of right-of-way for a public road, bridge or public improvement project of the Kansas Department of Transportation or a municipality;
- The taking is by any public utility;
- The taking is by any gas gathering service, pipeline company or railroad;
- The private property owner has acquiesced in writing to the taking by any municipality;
- The property has defective or unusual conditions of title or unknown ownership interests in the property and is taken by any municipality; or

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\*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. The conference committee summary report may be accessed on the Internet at <http://www.kslegislature.org>

- The property is unsafe for occupation by humans under the building codes.

### **Legislative Approval of Taking For Economic Development**

Any taking of private property for the purpose of transferring it to any private entity except as authorized above, must be expressly authorized by the Legislature on or after July 1, 2007, by enactment of a law that identifies the specific tract or tracts to be taken. The Legislature would be required to consider providing extra compensation to the person whose land will be taken of at least 200 percent of the fair market value.

### **Tax Increment Law Change**

The tax increment financing law would be amended to provide that on or after July 1, 2007, the power of eminent domain only could be exercised as provided in this act, *i.e.*, legislative approval by passage of a bill approving eminent domain for a specific project would be required. Most of the eminent domain provisions of the bill would have a one-year delay in the effective date to allow tax increment projects (*e.g.*, Manhattan), currently in progress, to be completed under provisions of current law.

### **County Home Rule Exception—Added**

The bill would add another exemption on and after July 1, 2007, to the county home rule law to provide that a county may not exempt itself from or effect changes in this act.

### **Kansas Eminent Domain Procedure Act Changes**

The Kansas Eminent Domain Procedure Act would be amended to allow a defendant 10 days to remove personal property from the owner's real property which has been condemned and to require the district court clerk to notify property owners of this 10-day provision; and to provide that an appeal would be deemed perfected upon the filing of a notice of appeal and applying this clarification retroactively to July 1, 2003. The bill also would add definitions of "municipality" and "taking" to the Act. Municipality would be defined to include cities, counties and unified governments.

### **Non-Severability Clause**

\_\_\_\_\_The bill would provide that all the sections of the bill dealing with eminent domain, except the section dealing with appeals, are not severable and if one of these sections is found to be unconstitutional all nonseverable sections would be null and void.

### **Land Surveyors-Engineers**

The bill would amend several statutes to require surveys of land to be taken by eminent domain be conducted by licensed land surveyors or by a professional engineer competent to conduct a land survey.

### **Effective Dates of Different Provisions of the Act**

The effective date of the most of the eminent domain provisions of the bill would be July 1, 2007, to allow the completion of tax increment provisions. The effective date of the land surveyors projects of the bill would be July 1, 2006. The effective date of the eminent domain appeals provision would be the *Kansas Register*.

### **Conference Committee Action**

The Conference Committee agreed to the House amendments to the bill plus the following changes:

- Clarifications were made to Section 2 dealing with entities not subject to the restrictions of the bill;
- The effective dates of different provisions the bill were made;
- The grandfather clause for current tax increment financing projects in progress was deleted;
- The time frame for removal of personal property from the site of the condemned real property was shortened from 30 to 10 days; and
- A non-severability clause was added covering the eminent domain provision of the bill with the exception of the appeals statute.

## Background

The U.S. Supreme Court on June 23, 2005, ruled in *Kelo v. New London* that the “public use” provision of the “takings clause” of the 5<sup>th</sup> Amendment of the *U.S. Constitution* permits the use of eminent domain for economic development purposes without a finding that the private property to be taken is blighted. The case has led to a number of states to consider restrictions on the use of the power of eminent domain for economic development purposes. For more background information see “Eminent Domain,” Kansas Legislator Briefing Book 2006.

The Senate Committee on Judiciary held hearings on two proposed constitutional amendments to restrict or prohibit the taking of private property for economic development purposes and held hearings on three bills which would restrict the use of the power of eminent domain. Proponents of the restrictions included several legislators, various farm organizations and others. Opponents of curtailment or banning the use of eminent domain for economic development purposes included representatives of cities, counties, economic development organizations, chambers of commerce and others.

The chairman of the Senate Judiciary Committee asked the groups to meet and develop a compromise. The bill as amended by the Senate Committee represented the compromise work of those groups.

The Senate Committee of the Whole deleted provisions in the bill which would have permitted the taking of private property for economic development purposes subject to certain expanded procedural requirements and enhanced compensation requirements.

The House Committee of the Whole amendments included those made to the Kansas Eminent Domain Procedure Act, the licensed land surveyor provisions and the provisions exempting redevelopment districts already created from eminent domain restrictions of this Act.

eminent domain