

HOUSE BILL No. 2441

By Committee on Taxation

3-18

1 AN ACT concerning the Kansas emergency management act; relating to
2 an award of compensation; requiring payment by governmental entities
3 commandeering or using property; amending K.S.A. 48-933 and
4 repealing the existing section.
5

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

7 Section 1. K.S.A. 48-933 is hereby amended to read as follows: 48-
8 933. (a) Each person within this state shall act and manage the affairs of
9 such person and such person's property in any way which reasonably will
10 assist and not detract from the ability of the state and the public
11 successfully to meet disasters. This obligation includes appropriate
12 personal service and use or restriction on the use of property during a
13 declared state of disaster emergency under K.S.A. 48-924, and
14 amendments thereto, or a declared state of local disaster emergency under
15 K.S.A. 48-932, and amendments thereto. This act neither increases nor
16 decreases these obligations, but recognizes their existence under the
17 constitution and statutes and the common law of this state. Compensation
18 for services or for the taking or use of property shall be only to the extent
19 that obligations recognized in this subsection are exceeded in a particular
20 case and then only to the extent that the claimant may not be deemed to
21 have volunteered services or property without compensation.

22 (b) No personal services may be compensated by the state or any
23 subdivision or agency thereof, except pursuant to statute enacted or
24 ordinance duly adopted therefor.

25 (c) (1) Compensation for property shall be only if the property was
26 commandeered or otherwise used in coping with a disaster and its use or
27 destruction was ordered by the governor, adjutant general, an official of a
28 county, city or interjurisdictional disaster agency, or some other authorized
29 member of the emergency management forces of this state.

30 (2) *As used in this subsection:*

31 (A) "Use" means any taking as defined in K.S.A. 77-703, and
32 amendments thereto, any other restriction, limitation on access to or
33 operation of private property or exertion of control over any private
34 property for any amount of time pursuant to an order under K.S.A. 48-920
35 et seq., and amendments thereto, or substantially burdening the operation
36 of any religious, civic, business or commercial entity, whether for-profit or

1 *not-for-profit.*

2 (B) *"Private property" means the same as defined in K.S.A. 77-703,*
3 *and amendments thereto, as well as any other personal, business or other*
4 *property used by the state.*

5 (d) Any person claiming compensation for the use, damage, loss or
6 destruction of property under this act shall file a claim therefor in the
7 district court in the same manner as any other civil action. The court shall
8 determine the validity of such claim in the same manner and under the
9 same conditions prescribed for condemnation actions pursuant to K.S.A.
10 26-501 et seq., and amendments thereto. Unless the amount of
11 compensation on account of property damaged, lost or destroyed is agreed
12 upon by the claimant and the adjutant general, the amount of
13 compensation shall be calculated in the same manner as compensation due
14 for a taking of property pursuant to the condemnation law of this state.

15 (e) Nothing in this section applies to or authorizes compensation for
16 the destruction or damaging of standing timber or other property in order
17 to provide a fire break or for the release of waters or the breach of
18 impoundments in order to reduce pressure or other danger from actual or
19 threatened flood.

20 (f) *Any award of compensation granted under this section shall be*
21 *paid by the governmental entity ordering the commandeering or use of the*
22 *property at issue.*

23 (g) *Except as provided in K.S.A. 48-925a, and amendments thereto,*
24 *any award of compensation for the commandeering or use of the property*
25 *by the governmental entity shall be limited to the actual cost of such use as*
26 *determined by the board of appraisers. Pursuant to this section,*
27 *compensation for the commandeering or use of any property shall not*
28 *include loss of present or future profits, opportunity cost or other*
29 *extraordinary damages.*

30 Sec. 2. K.S.A. 48-933 is hereby repealed.

31 Sec. 3. This act shall take effect and be in force from and after its
32 publication in the statute book.