

*[As Further Amended by Senate Committee of the Whole]*

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*[As Amended by Senate on Third Reading]*

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*[As Amended by Senate Committee of the Whole]*

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*As Amended by Senate Committee*

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*Session of 2004*

## SENATE BILL No. 547

By Committee on Ways and Means

2-26

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16 AN ACT concerning eminent domain; relating to certain limitations on  
17 taking of private property; amending K.S.A. **26-502 and** 26-513 and  
18 repealing the existing ~~section~~ **sections**.

19

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

21 Section 1. K.S.A. 26-513 is hereby amended to read as follows: 26-  
22 513. (a) *Necessity*. Private property shall not be taken or damaged for  
23 public use without just compensation. ~~Notwithstanding any provision of~~  
24 ~~law to the contrary, in any taking of private property pursuant to law:~~  
25 ~~(1) There shall be no sale, lease or transfer of such property to a private~~  
26 ~~entity for a period of 30 years after such taking or appropriation, and (2)~~  
27 ~~there shall be no use of such private property by a private entity for a~~  
28 ~~period of 30 years after such taking or appropriation that results in com-~~  
29 ~~mmercial or economic benefit to the private entity, except upon specific~~  
30 ~~approval by virtue of legislative enactment that specifies the occasions,~~  
31 ~~modes, conditions and agencies for such private property's taking or ap-~~  
32 ~~propriation. The taking of private property for the purpose of selling,~~  
33 ~~leasing or transferring such property to any private entity to be~~  
34 ~~used by such private entity for industrial or economic development~~  
35 ~~shall not constitute public use. It shall be prima facie evidence that~~  
36 ~~the purpose of such taking was industrial or economic development~~  
37 ~~if such sale, lease or transfer resulted in commercial or economic~~  
38 ~~benefit to the private entity. No private property shall be taken~~  
39 ~~through the exercise of the right of eminent domain prior to a show-~~  
40 ~~ing stated in the petition filed pursuant to K.S.A. 26-502, and~~  
41 ~~amendments thereto, that all required state and federal permits to~~  
42 ~~use or develop any such property have been obtained [the condem-~~  
43 ~~nor has met with all required state and federal permitting agencies~~

1 ***and has a good faith belief that all permits necessary to use or de-***  
2 ***velop such property will be obtained***. [***Any private property's tak-***  
3 ***ing or appropriation for industrial or economic development may***  
4 ***be exempted from the limitations on such takings provided by this***  
5 ***subsection upon specific approval by virtue of legislative enactment***  
6 ***that specifies the occasions, modes, conditions and agencies for such***  
7 ***private property's taking or appropriation.***]

8 (b) *Taking entire tract.* If the entire tract of land or interest in such  
9 land is taken, the measure of compensation is the fair market value of the  
10 property or interest at the time of the taking.

11 (c) *Partial taking.* If only a part of a tract of land or interest is taken,  
12 the compensation and measure of damages is the difference between the  
13 fair market value of the entire property or interest immediately before  
14 the taking, and the value of that portion of the tract or interest remaining  
15 immediately after the taking.

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

22 (1) The most advantageous use to which the property is reasonably  
23 adaptable.

24 (2) Access to the property remaining.

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

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

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

33 (6) Severance or division of a tract, whether the severance is initial  
34 or is in aggravation of a previous severance; changes of grade and loss or  
35 impairment of access by means of underpass or overpass incidental to  
36 changing the character or design of an existing improvement being con-  
37 sidered as in aggravation of a previous severance, if in connection with  
38 the taking of additional land and needed to make the change in the  
39 improvement.

40 (7) Loss of trees and shrubbery to the extent that they affect the value  
41 of the land taken, and to the extent that their loss impairs the value of  
42 the land remaining.

43 (8) Cost of new fences or loss of fences and the cost of replacing

1 them with fences of like quality, to the extent that such loss affects the  
2 value of the property remaining.

3 (9) Destruction of a legal nonconforming use.

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

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

8 (12) Loss of or damage to growing crops.

9 (13) That the property could be or had been adapted to a use which  
10 was profitably carried on.

11 (14) Cost of new drains or loss of drains and the cost of replacing  
12 them with drains of like quality, to the extent that such loss affects the  
13 value of the property remaining.

14 (15) Cost of new private roads or passageways or loss of private roads  
15 or passageways and the cost of replacing them with private roads or pas-  
16 sageways of like quality, to the extent that such loss affects the value of  
17 the property remaining.

18 (e) *Fair market value*. "Fair market value" means the amount in  
19 terms of money that a well informed buyer is justified in paying and a  
20 well informed seller is justified in accepting for property in an open and  
21 competitive market, assuming that the parties are acting without undue  
22 compulsion. The fair market value shall be determined by use of the  
23 comparable sales, cost or capitalization of income appraisal methods or  
24 any combination of such methods.

25 **Sec. 2. K.S.A. 26-502 is hereby amended to read as follows: 26-**  
26 **502. A petition shall include allegations of: (1) The authority for and**  
27 **the purpose of the taking; (2) a description of each lot, parcel or**  
28 **tract of land and the nature of the interest to be taken; (3) insofar**  
29 **as their interests are to be taken (a) the name of any owner and all**  
30 **lienholders of record, and (b) the name of any party in possession;**  
31 **and (4) a showing that all required state and federal permits to use or**  
32 **develop any such property have been obtained pursuant to K.S.A. 26-513,**  
33 **and amendments thereto [the condemnor has met with all required**  
34 **state and federal permitting agencies and has a good faith belief**  
35 **that all permits necessary to use or develop such property will be**  
36 **obtained]. Such petition shall be verified by affidavit. Upon the**  
37 **filing of such petition the court by order shall fix the time when the**  
38 **same will be taken up. No defect in form which does not impair**  
39 **substantial rights of the parties shall invalidate any proceeding.**

40 Sec. ~~2~~ 3. K.S.A. 26-502 and 26-513 ~~is~~ **are** hereby repealed.

41 Sec. ~~3~~ 4. This act shall take effect and be in force from and after its  
42 publication in the statute book.