

SENATE BILL No. 441

By Committee on Judiciary

2-1

1 AN ACT enacting the fairness in condemnation act; relating to the eminent
2 domain procedure act; requiring the plaintiff condemning authority to
3 provide the property owner notice and opportunity for negotiation;
4 providing for court review of compliance with this act.

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

7 Section 1. (a) At least 60 days before filing of a condemnation
8 petition seeking to acquire an interest in real property under K.S.A. 26-
9 502, and amendments thereto, the plaintiff condemning authority shall
10 provide each owner of record of the property with a written notice
11 concerning the intended condemnation. The notice shall include:

12 (1) Identification of the interest in real property to be acquired and a
13 statement of the legal description or commonly known location or address
14 of the property;

15 (2) the purpose or purposes for which the property is to be acquired;

16 (3) a statement that the property owner has the right to:

17 (A) Seek legal counsel at the owner's expense;

18 (B) make a counteroffer for the sale of the property and engage in
19 further negotiations;

20 (C) obtain the owner's own appraisal of the value of the interest to be
21 condemned; and

22 (D) contest the right to condemn in a separate legal proceeding.

23 (b) An owner may waive the notice requirements of this section by a
24 written waiver executed by the owner.

25 (c) The written notice required by this section shall be deposited in
26 the United States mail, certified or registered, and with postage prepaid,
27 addressed to the owner of record as listed in the office of the county
28 appraiser in which the property is located. The receipt issued to the
29 condemning authority by the United States post office for certified or
30 registered mail shall constitute proof of compliance with this notice
31 requirement. Nothing in this section shall preclude a condemning authority
32 from proving compliance by other competent evidence.

33 Sec. 2. (a) The plaintiff condemning authority shall present a written
34 offer to each owner of record of the property. The offer shall be made at
35 least 30 days before filing a condemnation petition as provided in K.S.A.
36 26-502, and amendments thereto. The offer shall be deposited in the

1 United States mail, certified or registered, with postage prepaid, addressed
2 to the owner of record. The receipt issued to the condemning authority by
3 the United States post office for certified or registered mail shall constitute
4 proof of compliance with this requirement. Nothing in this section shall
5 preclude a condemning authority from proving compliance with this
6 requirement by other competent evidence.

7 (b) The plaintiff condemning authority, at the time of the offer, shall
8 provide the property owner with an appraisal or an explanation with
9 supporting financial data for its determination of the value of the property.
10 Any appraisal shall be made by a state certified or licensed appraiser using
11 generally accepted appraisal practices.

12 Sec. 3. (a) Before a district court may enter an order of condemnation
13 under the eminent domain procedure act, K.S.A. 26-501 et seq., and
14 amendments thereto, the court shall make a finding that the plaintiff
15 condemning authority engaged in good faith negotiations prior to filing the
16 condemnation petition. A plaintiff condemning authority shall be deemed
17 to have engaged in good faith negotiations if:

18 (1) All notices to property owners have been given as required by
19 section 1, and amendments thereto;

20 (2) the offer made under section 2, and amendments thereto, was not
21 lower than the amount reflected in an appraisal performed by a state
22 licensed or certified appraiser for the condemning authority, and an actual
23 appraisal was given to the owner as provided in section 2, and
24 amendments thereto;

25 (3) the owner has been given an opportunity to obtain the owner's
26 own appraisal from a state licensed or certified appraiser of the owner's
27 choice; and

28 (4) where applicable, the plaintiff condemning authority has
29 considered any alternate location suggested by the property owner.

30 (b) If the court does not find that good faith negotiations have
31 occurred, the court shall dismiss the condemnation petition, without
32 prejudice, and shall order the condemning authority to reimburse the
33 owner for the owner's actual and reasonable attorney fees and costs
34 incurred with respect to the condemnation proceeding that has been
35 dismissed.

36 (c) Sections 1 through 3, and amendments thereto, shall be known
37 and may be cited as the fairness in condemnation act.

38 (d) The fairness in condemnation act shall be a part of and
39 supplemental to the eminent domain procedure act.

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