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MEMORANDUM

To: House Committee on Agriculture and Natural Resources

From: The Office of Revisor of Statutes

Date: 03/12/2024

Re: S.B. 417, As Amended by Senate Committee of the Whole; limiting the secretary of wildlife and park's authority to exercise the right of eminent domain.

Section 1 would amend K.S.A. 32-840¹, which concerns the exercise of the right of eminent domain² by the secretary of wildlife and parks. Under current law, the secretary may exercise the right of eminent domain for the purpose of acquiring lands, water and water rights as necessary to accomplish the goals in paragraphs (1) and (2). The bill would strike the words “water and water rights” from such list. Paragraph (a)(2) would strike the words “add to” and “waters”.³

Under current law, subsection (b) states that taking, using and appropriating property as authorized by subsection (a)(2) is declared a public use. The bill would replace such language to

¹ K.S.A. 32-840; https://www.ksrevisor.org/statutes/chapters/ch32/032_008_0040.html

² U.S. Const. amend. V “[...] nor shall private property be taken for public use, without just compensation” (applicable to Kansas through the 14th amendment).

See also: Kansas. Attorney General Opinion 82-50 (1982) <https://ksag.washburnlaw.edu/opinions/1982/1982-050.pdf>

(“Eminent domain is the right to take private property for public use without the owner's consent upon payment of just compensation. The right is an inherent power of the sovereignty and comes into being with the establishment of government and continues as long as the government endures, but its exercise may be limited by the constitution. Except as so limited, it may be exercised for any public purpose designated by the legislature and in the manner it prescribes.” 186 Kan. at 252)

(“It rests with the legislature to determine the power of eminent domain, when the power may be exercised and the character, method and extent of such exercise. The power of eminent domain can only be exercised by virtue of a legislative enactment. However, once the legislature has delegated to a public authority the power to determine the necessity of exercising the power, the decision of the grantee as to the necessity can only be reviewed by the courts for the purpose of considering public use, fraud, bad faith, or abuse of discretion. A court cannot sit in judgment on the motives actuating a public authority in pursuing a course authorized by the legislature.” 192 Kan. at 244)

³ (“[...] necessary to: [...] protect, ~~add to~~ and improve [...] other lands, ~~waters~~ and facilities”)

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state that taking, using and appropriating property for the purpose of access to resources or land already owned by the department would be declared a public use.

Under current law, subsection (c) states that, upon request of the secretary, the attorney general shall proceed to acquire by condemnation all lands, or rights therein or thereon, and all water or water rights required by the department. The bill would amend this language by replacing “shall” with “may” and striking “and all water or water rights”.

S.B. 417, As Amended by Senate Committee of the Whole, would become effective upon publication in the Kansas register.