Approved: February 24, 2009
Date

MINUTES OF THE SENATE LOCAL GOVERNMENT COMMITTEE

The meeting was called to order by Chairman Roger Reitz at 9:30 a.m. on February 17, 2009, in Room 446-N of the Capitol.

All members were present except:
Senator Susan Wagle- excused

Committee staff present:
Mike Heim, Office of the Revisor of Statutes
Ken Wilke, Office of the Revisor of Statutes
Martha Dorsey, Kansas Legislative Research Department
Reed Holwegner, Kansas Legislative Research Department
Noell Memmott, Committee Assistant

Conferees appearing before the committee:
John Smith, John T. Smith Associates, Inc
Jack Glaves, Panhandle Eastern Pipe Line Company, LP and DCP Midstream, LLC
Mark Schreiber, Director, Government Affairs, Westar Energy

Others attending:
See attached list.

SB 144 - Subdivisions; blanket easements, void; exceptions. Mike Heim, revisor, reviewed the bill. The bill amends three statues dealing with subdivision planning, zoning and filing of plats (Attachment 1) (Attachment 2). A blanket easement would be defined as not a specific description where an easement would run.

John Smith, John T. Smith Associates, Inc. testified in favor of the **SB 144** (Attachment 3). He said issues to blanket easements are not only related to subdivisions but also to lots, parcels, and tracts. The bill would provide a framework for both sides and provide more consistency.

Jack Glaves, Panhandle Eastern Pipe Line Company, LP and DCP Midstream, LLC, gave testimony against **SB 144** (Attachment 4). He provided a map showing areas of Kansas wells and pipelines. His concern was the right of way and the issue of safety.

Mark Schreiber, Director, Governmental Affairs, Westar Energy, testified against **SB 144** (Attachment 5). He related it would pose problems and Westar would be willing to work with developers.

Mick Urban, Manager Governmental Affairs, Kansas Gas Service/ONEOK, Inc. provided written testimony in opposition to **SB 144** (Attachment 6). He suggested the utilities would possibly have to resurvey lines and the cost would roll back to the consumers.

Written testimony in opposition to **SB 144** was also submitted by: Ron Gaches, Southern Star Central Gas Pipeline (Attachment 7); Lot F. Taylor, Taylor & Associates, Engineers (Attachment 8); Wes Ashton, Governmental Affairs, Black Hills Energy (Attachment 9); Lon Stanton, Governmental Relations, Northern Gas Company (Attachment 10); Ron Gaches, Government Relations & Association Management, Gaches, Braden & Associates (Attachment 11); and Larry Berg, Larry Berg Consulting (Attachment 12).

The hearing was closed.

SB 114 - Zoning; group homes; certain restrictions. The discussion on **SB 114** was unresolved and the bill was referred to Federal and State Affairs.

SB 253 - Zoning amendments; protest petitions; mining operations; extraordinary vote not required.
SB 254 - Urban area counties; zoning amendments and conditional use permits; protest petitions, other; extraordinary vote not requires. Mike Heim, revisor, reviewed the bills which are dealing with extraordinary and majority vote. **SB 253** and **SB 254** will be continued on February 24th.

The next meeting is scheduled for February 24th.

The meeting was adjourned at 10:30 p.m.

LOCAL GOVERNMENT
GUEST LIST

DATE: 2-17-09

NAME	REPRESENTING
Mick Urban	ONEOK / Kansas Gas Service
Ron Peterson	KS Petroleum Council
Lon Stanton	Northern Natural
Jack Glaves	DCP & Panhandle Eastern
Scott Jones	KCPL
Mike Reece	Gacke Braden
Mark Schreiber	Westar Energy
Woody Moses	KAPA
Woody Harms	-V

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Blanket Utility Easement
Larry Chesebro', Fox Wood Estates, Private Citizen, Larry@Chesebro.net
11/09/2007
A simple 1945 utility easement agreement between an electric co-op and land
owners of 175 acres allowed easement for the complete area so the owners could have electricity service. A portion of that land, after multiple owner ship transfers, in the early 1960's was surveyed, platted (County records) and developed for a housing subdivision. The original and currently updated plats define specific utility easements areas along streets and property lines. However, the co-op insists they have a "blanket" easement for all the land based on the 1945 easement and the 1960's platted easements are not enforceable. The 1945 easement does not assign the easement to the then current grantors succesors or assigns and etc. Which set of easements is legal and if the plat easements do not replace the 1945 easements what can be done?
[Post a Reply][Back to Top]

Re: Blanket Utility Easement
, State Government
11/10/2007
Without reviewing the document, the following is my initial impression of the situation:
Although it may be a valid easement, I am not aware that the dominant tenant of an easement can hold the servient tenant hostage over the entire parcel when there has been provided to the easement holder what appears to be a reasonable and usable route for the utilities.
A half way decent real estate attorney should be well able to file a quiet title action and have the course(s) laid out on the plats be declared as the defined easement over those respective areas. If such action is taken, the route should be set for the entire major parcel of the 175 acres as it was originally situated utilizing the plats for the desired course. Those plats have presumably set out the highest and best use of the major parcel
[Post a Reply][Back to Top]

Re: Blanket Utility Easement
Larry Chesebro', State Government, Larry@Chesebro.net
11/12/2007
THANKS - every bit of feedback I can get helps "paint" the picture of what can or can't be done.

Our subdivision plats (3) were recorded with specific utility easements defined and so limited followed by utility service placement within the easemnets in the 1970's. The land changed ownership numerous times between before the land was platted as a 21 private home sites residential subdivision.

The utility company is now wanting to place 3 phase equipment in areas never used by the utility. Service we don't need but is needed for adjacent developments. Our association of our private sub-division will lose common area trees, a sign, and who knows what else - without monetary relief from the utility - because the utility now wants to have access to land not presently supporting any utilities.

During discussions with the utility company, I have learned portions of the

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Attachment 1

service placed after the plats were recorded is not within the defined easements. I have suggested the blanket easement be vacated and a new easemnet be negotiated and recorded defining acutal construction records and locations. The utility refuses to vacate the blanket easement unless the property owners association contracts and pays for a complete survey of the existing equipment location - to protect them from being responsible for their equipment that might not be in included in a new specific easement.

Two new questions:

1. Can the utility be prevented from adding new equipment, lines and etc pending a new easement.

2. Who should be responsible for determing present location of utility equipment and cable - some overhead and some underground cable?
[Post a Reply][Back to Top]

Re: Blanket Utility Easement
, State Government
11/13/2007
I would contact the utility to see if a common ground (no pun intended) can be worked out for the location of the equipment.

I would also start talking to good real estate attorneys to investigate whether their silence in all those years as to the location of improvements of all types on the developed parcels comes into play for use against them.

Lacking a lis pendens it could well be that the utility can proceed not only with the new equipment but for their location.

You need to take action as soon as possible
[Post a Reply][Back to Top]

Re: Blanket Utility Easement
ken, State Government, ksrcom@fuse.net
01/26/2008
i have a a two-acre tract of land with an existing single-family home. the current zoning (20,000 s.f. lots) allows for the construction of three new homes. the existing home discharges its sewage into a private sewer line to the home's rear. that same sewer line runs through two other single-family properties to the south before reaching a public main. in other words, my home is at the beginning of the line.

therefore a private utility easement is in place (and has been for many years) for the benefit of my property. since the private main is 10 inches, it can easily handle the waste waters of the three other proposed homes.

in the state of ohio, what is my ability to "extend" the easement for the three additional homes, without consent from the two southward neighbors with whom the private easement exists.

from what i know, the easement doesn't include language limiting my use to "one" home.

thanks for your reply - ken

[Post a Reply][Back to Top]

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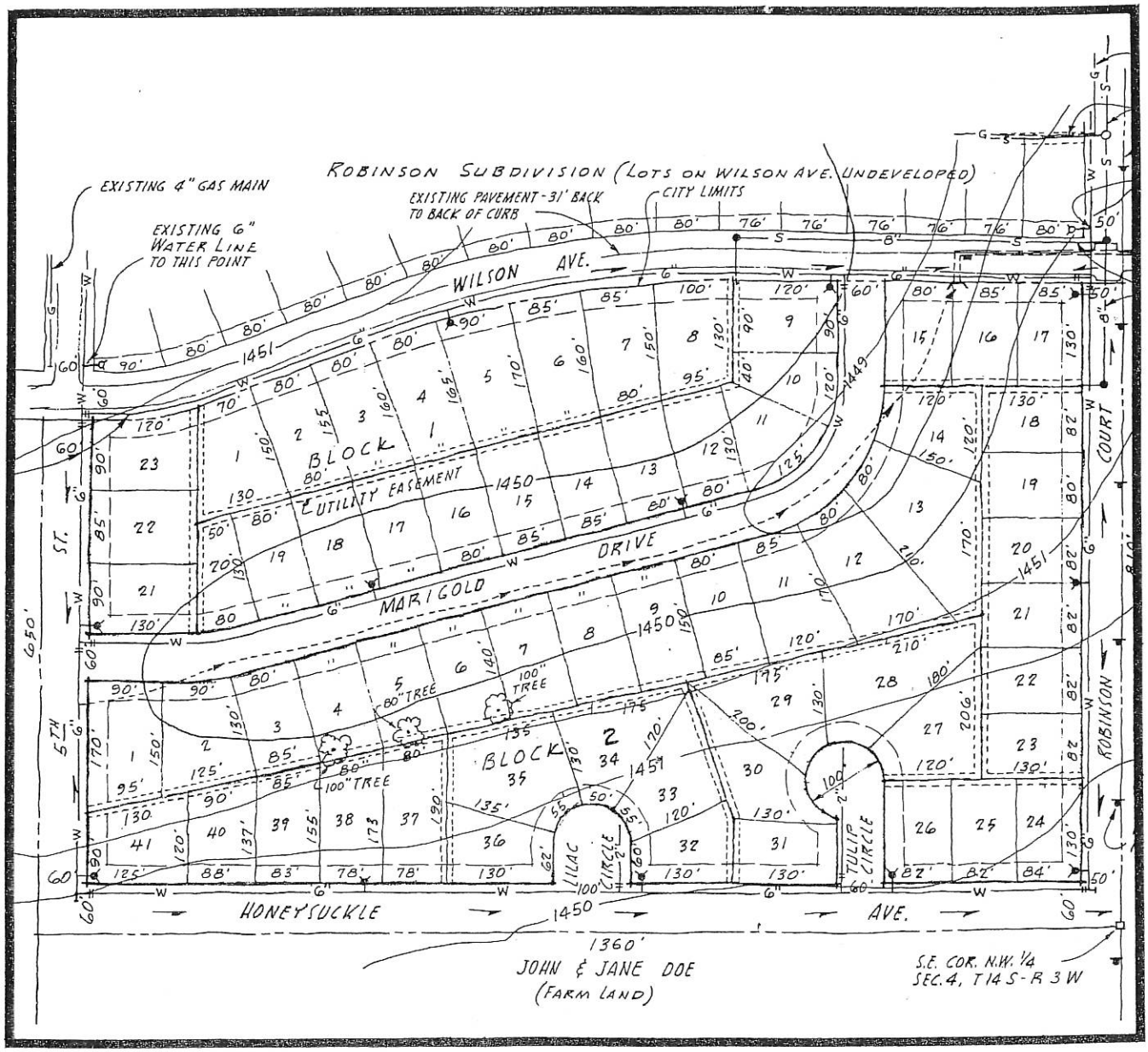
subdivision regulations for cities



Prepared and published by League of Kansas Municipalities
in cooperation with the Planning Division of the
Kansas Department of Economic Development

MAY 1975

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February 17, 2009

Senate Committee on Local Government
Senator Roger Reitz, Chairman
State Capitol, Room 371-E
Topeka, KS 66612-1504

Re: Senate Bill 144

Senator Reitz, Chm.
Committee Members,

The above referenced Senate Bill addresses the issue of blanket easements in our state and their impact on the rights of land owners to the use of their land. I submit the following for your review in consideration of the changes proposed in SB 144.

Blanket Easements - Their Impact on Land Owners

Case 1

A simple 1945 utility easement agreement between an electric co-op and owners of 175 acres of land allowed easement for the complete area so the owners could have electricity service. A portion of that land, after multiple ownership transfers, in the early 1960's was surveyed, platted and developed for a housing subdivision. The original and currently updated plats define specific utility easements areas along streets and property lines. However, the co-op insists they have a "blanket" easement for all the land based on the 1945 easement and the 1960's platted easements are not enforceable. The 1945 easement does not assign the easement to the then current grantors successors or assigns and etc. Which set of easements is legal and if the plat easements do not replace the 1945 easements what can be done?

Case 2

Our subdivision plats (3) were recorded with specific utility easements defined and so limited followed by utility service placement within the easements in the 1970's. The land changed ownership numerous times before the land was platted as a 21 private home sites residential subdivision. The utility company now wants to place 3-phase equipment in areas never used by the utility. Service we don't need but is needed for adjacent developments. Our association and our private sub-division lot owners will suffer damage - lose common area trees, a sign, and who knows what else, without relief from the utility - because the utility now wants to have access to land not presently supporting any of their utilities. The utility refuses to vacate the blanket easement.

Case 3

A home owner bought a property that the previous owner had placed a garage on that turned out to be within 41 inches of a pipeline. The easement holder (appellant pipeline company) sought possession and removal of the garage based on alleged encroachment of the company's easement. District court found in favor of defendant home owners in large part because the easement did not expressly define the amount of space the company needed to adequately maintain its pipeline, and there was evidence that it could be maintained with the garage in place. The appeals court affirmed the district court's judgment, noting the company's easement is a blanket easement that does not have specified dimensions (width or location) as it crosses the property.

The above cases are illustrative of problems created by the once prevalent practice of taking a blanket easement on property for a noble and legitimate proposed use, and the at least implied intention of the use ultimately being more specifically described and located. This practice is most common in the areas of utility and public service corporations, transportation, and mineral exploration and pipelines. The easements are the same whether acquired by purchase, gift, negotiation or condemnation. The end result today is that many properties, either already subdivided, or ripe for subdividing, platting and development, have clouds to their title and impediments to achieving their highest and best use. In some cases, it may even cause problems in achieving any reasonable alternative use.

It may be helpful to clarify the meaning of the terms being used. An easement is a right of one person or entity, the easement holder (dominant tenant), to use the real estate of another (the land owner; servient tenant), for a special use or purpose. It does not include the right to possession or occupation (i.e. ownership) of the land or the right to its profits. Typically, an easement requires specificity in the description of use and location; it must be identifiable.

Blanket easements or rights grew out of a desire or need to acquire a right to access property for a probable use at a to-be-determined location. Distinguished from the easement defined above, a **blanket easement**, lease, or agreement is one where the instrument or order allows the holder to locate its facilities (use) at an undefined location(s) on, over, under, or across the burdened property. While this has existed for decades, in the last generation it has become more problematic with additional growth, land subdivision and development, particularly in areas where there may once have been thought not to be a concern.

To address the problems created by a blanket easement most recent practice requires the acknowledgment and recognition of a blanket easement, lease or agreement only when it is reduced to a specific or defined location within a certain stated time limit, following notice, or upon placement and location of the proposed facility or use. Some states allow a blanket easement only if the instrument creating the blanket easement contains language that upon completion of the initial structure(s) or establishment of the use it explicitly fixes the burden, scope of use, and footprint within the express terms of the instrument and also contains an express statement that the location of the burden shall be fixed to the degree occupied by the initial structure(s) upon the completion of such structure(s).

Minnesota, for example, requires that easements over private property must definitely and specifically describe the easement being acquired. But more importantly, when a question arises as to location, width, or course of an easement, or upon written request by the specific property owner, the easement holder shall produce and record in a timely manner an instrument that provides a definite and specific description, based on the minimum width (dimensions) necessary for the conduct of the business. The production and recording shall take place after the requesting property owner has had not less than 30 days in which to review or object to the terms of the description. This statutory requirement applies to every easement over private property regardless of when the easement was acquired or created or whether obtained by purchase, gift, or eminent domain proceedings.

For the unknown burden and restriction placed on the land owner, however, some states have determined that any blanket easement shall be void as against public and wholly unenforceable. To characterize the situation in lay terms, it is considered unconscionable for the easement holder to hold an entire property hostage indefinitely for an unknown or unidentifiable purpose at an undetermined location.

Suggested Solution.

The use, development, or subdivision and platting of land in Kansas is typically governed by statute in one of three sections. For land generally in or within 3 miles of a city having adopted planning and zoning procedures, KSA 19-752 is usually applicable. For land in unincorporated areas of counties having adopted planning and zoning procedures, KSA 19-2678 is usually applicable. For most other land not covered by planning and zoning procedures, KSA 19-2633 is usually applicable.

It being recognized that blanket easements without some limit, control and definition are not in the public interest, amendment to the statutes governing land subdivision and development is the simplest and most prudent cure to the problems created. A land owner desiring to subdivide and/or develop and use property burdened by a blanket easement should be able to move forward upon giving the easement holder timely notice of his development intentions and have the easement holder provide specified locations consistent with the generally accepted practice appropriate for the intended use.

The issue addressed in SB 144 is of state wide importance and highly desirable in clarifying the property rights of both land owners and easement holders.

Suggested tweaks to the proposed language.

A couple of additional thoughts might be considered – a penalty/damage provision and applicability without subdividing land.

First, the concept of penalty and damages for failure to release unused rights of way has been established in Kansas for more than 25 years. However, its applicability appears narrow and limited strictly to abandoned pipelines. But it does provide precedence for remedy where the easement holder fails to release after a request from a land owner. This principle could be

incorporated in the proposed amendments by adding a final sentence to each change to read as follows.
Upon failure of the entity holding the easement to respond as herein provided, property owner may bring an action in a court of competent jurisdiction to recover from the easement holder damages in the amount of $5000 together with costs and reasonable attorney fees for preparing and prosecuting the action, plus additional damages as the evidence warrants.

An alternative solution might be to just broaden the pipeline example above to include blanket easements. Suggested changes are in italics on the accompanying copy of KSA 58-2271.

Second, there are many situations in land use and land development where lots, parcels or tracts exist that may not require subsequent subdividing or platting. Yet these are lots, parcels or tracts, usable by the land owner, which may be burdened by a blanket easement(s). From my subsequent consideration of the proposed amendment wording, and discussions with others who have experienced the problems created by blanket easements, it is apparent (and as the cases illustrate) the blanket easement issue is not just limited to new subdivision development. More appropriate, and I believe effective, wording would be to include lots, parcels and tract along with subdivisions in the wording in SB 144. Therefore, make the first line of each of the three suggested italicized changes in SB 144 to begin as follows:

"*For any lot, parcel, tract or subdivision...*"

Recommendation.

I strongly support SB 144 with the additional 4 words incorporated in the first line of each change and would ask for the committees endorsement and recommendation to the full Senate for adoption of the bill.

Almost as a parenthetic comment, it is worth noting that Case 3 referenced above is a Kansas Court of Appeals case (#96,103). The substance of the changes proposed in SB 144, especially with the incorporation of the four additional words, in one sense borders on a codification of the logic and decisions of our own state courts. The outcome of this litigation seems to support by case law decision what the enactment of SB 144 would statutorily clarify and in the process make the use of a blanket easement more uniformly consistent and applicable state wide.

Thank you for your consideration.

John T. Smith, Member
Am. Institute of Certified Planners (AICP)

Enc amended 58-2271

\esmt sb144 hearing 021709

(Suggested addition to SB 144 as Sec. 4.)

58-2271

Chapter 58.--PERSONAL AND REAL PROPERTY
Part 6.--MISCELLANEOUS PROVISIONS
Article 22.--CONVEYANCES OF LAND

58-2271. Abandoned pipeline easements, *blanket easements*; release, failure to file, remedy. (a) For the purposes of this section, a pipeline easement shall be considered abandoned if the pipeline is removed from the easement without provision for replacing of the pipeline, or if no pipeline is placed in the easement within ten years after the easement is granted. *Blanket easements shall be considered as easements without specificity as to their use at undefined locations on, over, under, or across the burdened property, whether acquired by purchase, gift, eminent domain proceedings, or otherwise.*

(b) If the grantee or assignee of record of a recorded pipeline easement abandons such easement, *or for any blanket easement,* the grantee or assignee of record, within 20 days after requested by the owner of the property subject to the easement, *and allowing the owner not less than 30 days in which to review or object to the terms of such description,* shall file a release of the easement with the register of deeds of the counties in which the property is located.

(c) If a grantee or assignee of record of a *blanket easement or* pipeline easement refuses or neglects to file a release when required by subsection (b), the owner of the property may bring an action in a court of competent jurisdiction to recover from the grantee or assignee of record damages in the amount of *$5000*, together with costs and reasonable attorney fees for preparing and prosecuting the action. The owner may recover such additional damages as the evidence warrants.

(d) As used in this section, "pipeline" means any pipeline designed to deliver an energy product other than for sale at retail.

History: L. 1981, ch. 219, § 1; July 1.

STATEMENT OF
PANHANDLE EASTERN PIPE LINE COMPANY, LP
AND
DCP MIDSTREAM, LLC
IN OPPOSITION TO SB 144
SENATE COMMITTEE ON LOCAL GOVERNMENT
FEBRUARY 17, 2009
PRESENTED BY JACK GLAVES

Mr. Chairman and Members of the Committee:

I am Jack Glaves of Wichita, Kansas. I represent Panhandle Eastern Pipe Line Company, LP and DCP Midstream, LLC, which respectively own and operate extensive natural gas transmission and gathering pipelines in Kansas.

We understand and appreciate the problem faced by a developer of land encumbered by a pre-existing easement and we recognize that a request to define the boundaries of the right-of-way to accommodate the use of the remainder of the land should be honored, as is customary with my clients and the industry in general.

We have two major concerns; sanctity of contract and public safety.

We are concerned with the assertion in this Bill that all blanket easements in a proposed development are declared to be "void as against public policy and wholly unenforceable", notwithstanding an existing contract establishing the easement.

This pronouncement is contentious, unnecessary and bound to lead to litigation heaven.

There are thousands of miles of natural gas pipeline in Kansas under blanket easements (see Exhibit A). They are critical in getting Kansas gas to market. They are essential to drilling and development and to the Kansas economy.

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Attachment 4

Under SB 144 an easement that is contractually binding and under which the pipelines were installed, suddenly becomes void to the extent it is located in a subdivision, even if it is in a remote rural area. The bottom line is that part of the pipeline system is deemed valid and part is in jeopardy, even though it may be an integrated system and exists under the same binding contract.

High pressure natural gas transmission and gathering pipelines present unique problems requiring a minimum width of right-of-way to protect the public safety and permit the exercise of the rights granted by the right-of-way contract.

Pipelines and residential development are not very compatible. They have to be inspected, tested, occasionally repaired and replaced, which involves large equipment. The smaller the work area, the greater the danger. A developer has to recognize the obstacle that a pipeline presents and provide sufficient space in his platting to enable the pipeline to exercise its pre-existing rights in an efficient and safe manner.

Obviously, the developer is aware of the existence of the easement when he acquires the land and would presumably discuss the issues presented by its existence with the easement owner and do the platting in conformance with the special circumstances arising from the particular facilities. We respectfully suggest that the resolution of any dispute between the developer and the easement owner could and should be by negotiation and that a legislative solution should be reserved for evidence of a systemic problem. Industry is certainly not aware of such abuse as to warrant jeopardizing existing contracts.

If the Committee senses that there is a compelling need to address the issue then we would suggest that proponents and industry (gas, electric and others affected) try to

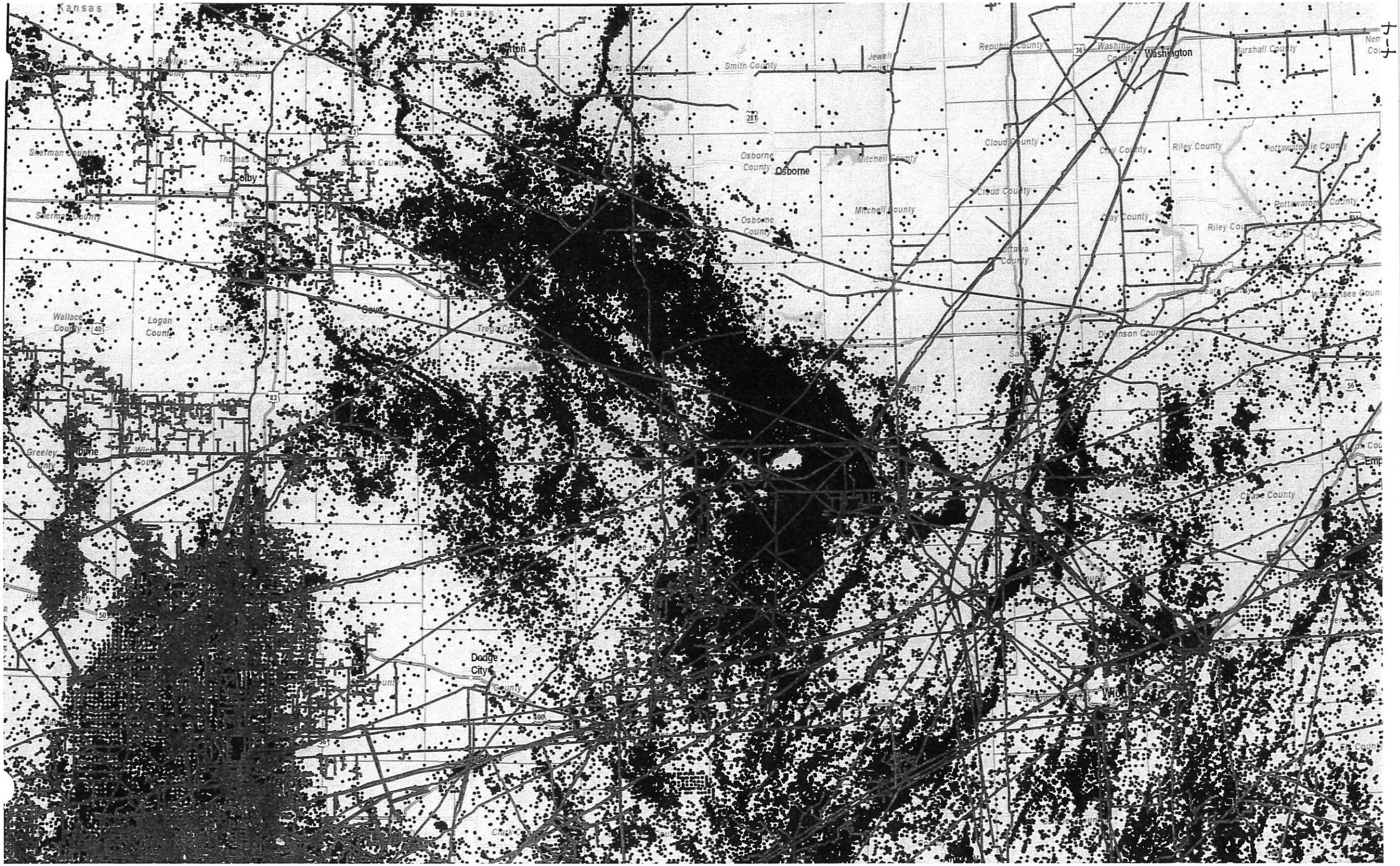
agree to amendatory language to specifically recognize the sanctity of contract principles and to specify minimum widths, particularly for natural gas transmission and gathering pipelines.

Without a specified standard the uncertainty of what is a "reasonable, definite and specific description" would lead to expensive and time consuming litigation to the detriment of all concerned.

We appreciate your consideration and will try to respond to any questions.

Respectfully submitted:

Jack Glaves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Ford County

Westar Energy®

MARK A. SCHREIBER
Director, Government Affairs

Testimony of Mark Schreiber
Before the Senate Local Government Committee
On SB 144
February 17, 2009

Good morning Chairman Reitz and members of the committee. Thank you for the opportunity to testify in opposition to SB 144.

Senate Bill 144 would void blanket easements. Westar Energy has many blanket easements across our service territory. Many of these easements were obtained prior to the 1970's by KPL and KG&E describing the owner's tract, as was the industry practice. The general route of a new transmission line was estimated and a blanket easement negotiated with the landowners. In many cases we didn't know the exact location of the line's centerline until the completion of detailed surveying and design work, which typically was after the acquisition of the blanket easements. Virtually all of the easements we acquire today are of the "strip" type, which describes our easement as a specific length and width across tracts of land.

Currently, landowners and/or developers contact Westar to modify the blanket easement. We request they provide a survey and legal description of the easement to be retained. We prepare a partial release and modification of right of way. Both parties sign and it is recorded. It is the owner's responsibility to clear the land of these easements before platting the subdivision lots.

Our experience has been that periodically in the platting process, the blanket easements are not properly identified on the plat by the developer or the planning commission staff. Kansas requires surveyors or design engineers to show either our facilities as a physical entity across a platted area or show our easement on the plat with the book and page or metes and bounds description. Plats do not always have either of these requirements as they pass through the various local platting processes.

Thank you again for the opportunity to testify this morning.

818 South Kansas Avenue / P.O. Box 889 / Topeka, Kansas
Telephone: (785) 575-8369 / Fax: (785) 575-8119 / Mobile: (78
mark.schreiber@WestarEnergy.com

KANSAS GAS SERVICE
A DIVISION OF ONEOK

Before the Senate Committee on Local Government
SENATE BILL 144
Written testimony of Mick Urban, Manager Governmental Affairs
Kansas Gas Service/ONEOK, Inc., 7421 West 129th Street, Overland Park, KS
913-319-8801
February 17, 2009

Good morning Chairman Reitz and members of the committee. My name is Mick Urban and I am submitting written testimony in opposition of Senate Bill 144. I represent ONEOK, Inc. and its natural gas distribution company, Kansas Gas Service. Kansas Gas Service is the state's largest natural gas distribution company serving more than 642,000 customers. In addition, ONEOK, Inc. owns natural gas gathering lines, natural gas and natural gas liquids transmission lines and natural gas liquids processing and storage facilities in Kansas.

SB 144 could effectively void blanket easements under certain circumstances. Blanket easements are rarely acquired today though they served a purpose decades ago - during the development of various natural gas and liquids lines prior to 1970. As pipelines were built across farmlands in Kansas the precise route was not always known at the start of project so blanket easements were secured. Blanket easements, negotiated with landowners, gave Kansas Gas Service and other utilities the legal right to occupy the property without having to specifically state where the lines would be located.

Over the years as urban development has encroached upon rural property, blanket easements are modified through a partial release of the original easement – with a resulting easement that more narrowly identifies the easement to what the utility needs. Landowners and developers can request that a blanket easement be modified by calling Kansas Gas Service or the pipelines' owner. The developer or landowner should provide a survey and legal description of the easement to be retained. We prepare the paperwork for a partial release and any changes to the right of way. The utility executes the partial release and it is recorded. It is the owner's responsibility to resolve any easement issues before platting the subdivision

If Senate Bill 144 passes, the impact will be extraordinary. The bill constitutes a taking of property without compensation. Utilities have paid for these easements and they can be deemed void without compensation.

In summary, we believe this bill is unnecessary because there are systems in place today that the landowner/developer can follow to clear easements prior to development.

Thank you again for the opportunity to submit written testimony.

Senate Local Government
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Attachment 6

GACHES, BRADEN & ASSOCIATES
Government Relations & Association Management

825 S. Kansas Avenue, Suite 500 ◆ Topeka, Kansas 66612 ◆ Phone: (785) 233-4512 ◆ Fax: (785) 233-2206

Comments of Southern Star Central Gas Pipeline
Regarding SB 144 – Blanket Easements
Senate Local Government Committee
Submitted by Ron Gaches
Tuesday, February 17, 2009

Southern Star Central Gas Pipeline is opposed to enactment of the prohibition on blanket easements contained in Senate Bill 144. The bill appears to be unnecessarily board in its impact and would invalidate a significant number of existing blanket easements without making any provision for their replacement or for compensating the company holding the easement (which is a property right) for the loss of their property.

As currently drafted, the bill does not define key terms that are essential to implementation of the bill. Specifically, the phrases "reasonably defined or expressed use" and "definite and specific description" are not defined in the bill. While their meaning may be clear to the drafters of the bill, it is not clear what the standards for compliance with the bill would be with this language.

It is standard procedure for pipelines to secure easements for ensuring future access to their pipelines and related systems. Access ensures the pipeline company can adequately maintain the integrity and safety of its assets and address safety concerns when there is an emergency. Pipeline companies routinely compensate property owners for easements, including blanket easements. Invalidating blanket easements would have the affect of taking a property right of the pipeline company without adequate compensation.

There is a long history of pipelines and utility companies working cooperatively with property developers to address the mutual desire to develop land without unnecessarily impacting existing easements. Property developers and easement holders should be encouraged to work towards resolution of their mutual problems to permit development of property where possible without preventing the easement holder from protecting their pipeline or utility systems.

Southern Star urges the sponsors of this bill and interested parties to work towards resolution of their specific conflicts without need for wide sweeping legislation.

Senate Local Government
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Attachment 1

TAYLOR & ASSOCIATES, ENGINEERS

CONSULTING ENGINEERS

PHONE 580-256-1700
1-800-289-5584

312 E. OKLAHOMA
WOODWARD, OKLAHOMA 73801

February 16th, 2009

Senate Committee on Local Government
Attn: Senator Roger Reitz-Chairman

Re: Amendment to Bill 144

Dear Mr. Reitz,

I would like to address senate Bill 144, which is the amendment to the easements, so called blanket easements, that have been used during the 1940's through the 60's for mainly oil and gas and utility people to be able to construct their lines in, around, and over public property with hardly any consent after the blanket easement is granted with the owner. My name is Lot Taylor. I am a professional, civil engineer, have lived and worked in the Garden City, Finney County area for right at 30 years and have recently moved to Woodward, Oklahoma, and still run an office in Garden City office at this time with the main office moving to Woodward, Oklahoma. The reason for the move is because all my grandchildren live there and I wanted to be able to see them play sports, basketball, and have them grow up around their grandparents. I am a die and wool Kansan and will stay a die and wool Kansan all my life. When grandchildren are born in Oklahoma and their going to be living in Oklahoma, if I am going to see them in sports and grow up, I need to be near them.

I believe the senate Bill 144 does address the major problems, as a civil engineer had. Most of my problems have been created by platting of adjacent land to cities. I've represented almost every city in South West Kansas at some time and have plats in most of those towns. Many of the people that have owned the land today have either inherited the land or bought the land and were not aware that there were blanket easements on the land until the plat may have been started or almost finished and at that time we find out that there is a blanket easement on the land. At the time we find out that there is a blanket easement on the land, a large amount of effort may have been done and always is done, with the platting of the land, the surveying of the land, the street design, the drainage design, ect.; and so the owner is trapped into trying to work out an agreement with whoever the blanket easement is with. Most times, the owner of the easement finally will relent and grant with conditions of restricted easements on where their lines or power lines or utilities are located and whether they plan to locate more, and at that time, the owner may very well have to pay all of the costs of rewriting the easements and

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further, some additional charges can be made, simply because the holder of the easements desires additional funds. Most of the blanket easements that I have ran into are 1940's and 1950's series, and in my opinion, that is what I would call the good old days when people didn't think about a blanket easement going on forever and here in 2000, were finding out that these things do go on forever. I wish that we were a most commonly known factor with most people because still, people sign easements that go on forever not thinking that their helping John, that is trying to gain easement and get friends of the family, ect., but in fact, that easement may come back to haunt the person that granted it, for many years, or his sons or daughters, many years later.

I believe the bill is well thought out and by the way that it is worded, will function well to help people that are trying to develop plans close to cities and in the counties. That should help tremendously in moving a platting process for it. Most of the blanket easements that are on the books today could be tied down. I know of occasions on wind farms where there are blanket easements and yet, we need to be able to find where the blanket easements are at or utilities are at and many of the utility companies are able to give you a definite process because the lines at the time they were built can meander from point to point because of the blanket easement. So, it will be helpful in the wind farms and platting and I believe that as the control of land becomes more important, we should all look at what type of easement we should grant.

Yours Truly,

Lot F. Taylor P.E.
LFT:cdk

Wes Ashton
Government Affairs
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Legislative Testimony of Wes Ashton
Government Affairs, Black Hills Energy
Before Senate Local Government Committee
February 17, 2009

Good morning Chairman Reitz and members of the Committee. I am Wes Ashton, Government Affairs for Black Hills Energy for Kansas and Colorado. I appreciate the opportunity to offer legislative testimony in opposition to SB 144.

Black Hills Energy provides natural gas service to more than 110,000 customers in more than 50 communities across Kansas. The Black Hills Corporation purchased these assets from Aquila last July, as well as natural gas assets in Iowa, Nebraska and Colorado. Black Hills Energy now serves more than 750,000 gas and electric customers across seven states in the Midwest.

Black Hills Energy would like to offer our opposition to SB 144, which would amend Kansas statutes to bar all blanket easements in the state void as against public policy. Black Hills Energy has many blanket easements across our service territory. In one specific county in western Kansas we have hundreds of easements, and more than half of them are blanket easements. Many of these easements were obtained as far back as the 1920s, describing the owner's tract as was the common industry practice.

Routes of transmission and even some distribution lines were estimated and easements were negotiated with the landowners. In many cases we didn't know the exact location of the line's centerline until the completion of detailed surveying, which typically was after the acquisition of the blanket easements.

Black Hills Energy works closely with our communities and works to provide the best possible outcome in working with specific landowners. Normally a landowner or developers would contact Black Hills Energy to modify any blanket easements that exist on a property. We generally ask for a survey and legal description of the easement to be retained by Black Hills, and then we prepare a modification of right of way that is then recorded on public record. It has always been the property owner's obligation to clear the land of these easements before any development would occur.

If this bill were to pass as currently written, there would be concern with the outcome of our current interests and the increase in litigation that would arise. No landowner or easement holder would be certain what rights were left. If these blanket easements were to become void, it is unclear what would happen to our rights. It is unclear if these would become some other type of easement, or if there is no easement left. If there are no rights left, then our system integrity would suffer. If the blanket easement is turned into another type, there could be significant issues related to marking and replacing the thousands of blanket easements that currently exist.

While there are always situations that can result between landowner's development plans and the easement rights with the property, this bill would likely result in additional problems across the state. Thank you for the opportunity to offer testimony today and I will be happy to stand for any questions on this bill at the appropriate time.

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Written Testimony of Lon Stanton on Behalf of Northern Natural Gas Company
In Opposition to Senate Bill 144
February 17, 2009

Mr. Chairman and members of the committee my name is Lon Stanton and I submit this written testimony on behalf of Northern Natural Gas Company, an interstate natural gas pipeline, headquartered in Omaha, Nebraska, that has done business in Kansas for more than 75 years and that currently operates more than 1,800 miles of pipeline in Kansas as well as two underground natural gas storage facilities in the state. Northern goes on record as opposing Senate Bill 144.

Northern is deeply concerned that SB 144, as written, threatens, in certain instances, to void potentially hundreds of fairly-negotiated arms-length contracts agreed to between Northern and landowners for the use of their property. For more than three-quarters of a century Northern has enjoyed good relationships with Kansas landowners. The company affirms its readiness to work with any of them to resolve any problems that may from time to time arise.

Should the committee decide to move forward with this bill, Northern encourages committee members to first clarify some of its provisions. For instance, it seems unclear as to whether or not a landowner must make a written request for a defined easement or could simply void the easement by subdividing the land. The bill should require appropriate notice from the owner and time to provide an opportunity for the easement holder to negotiate and modify the existing easement.

Northern also believes that the bill arguably can be read to say that entities holding a blanket easement that has been voided would end up with utilities on, over or through the subdivided property without an effective easement, if not given notice and a chance to modify the blanket easement to a strip easement. The bill should require appropriate and adequate notice from the owner and time to provide an opportunity for the blanket easement holder to negotiate and modify the existing easement prior to any subdivision of the property.

Northern believes that any problems between companies and landowners can and should be worked out on a voluntary basis without the drastic changes, and perhaps unintended consequences that may be caused by the passage of this bill. For the reasons described above, Northern urges the committee to reject SB 144.

Lon Stanton
Lon Stanton Governmental Relations
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GACHES, BRADEN & ASSOCIATES
Government Relations & Association Management

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Comments of Atmos Energy
In Opposition to SB 144 – Prohibiting Blanket Easements
Submitted to Senate Local Government Committee
By Ron Gaches
Tuesday, February 17, 2009

Atmos is the second largest natural gas utility serving Kansas. We operator in scores of communities across the state, primarily in the greater Kansas City area, southeast Kansas, southcentral Kansas and southwest Kansas. Many of our service areas are small towns and rural areas.

Atmos has numerous blanket easements throughout the state used to ensure access to our pipeline and distribution systems. These easements are essential to maintaining the safety and integrity of our system.

We have an excellent record of working proactively with developers when they are platting a subdivision to define the easement is sufficient detail to allow the developer to move forward with their plans. However, if the bill allows developers to plat subdivisions without the full consent and cooperation of the utility on the definition of the new easement, this could cause us significant concern about our ability to protect the public safety and ensure the integrity of our system.

We urge the committee to oppose enactment of SB 144 in its current form.

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Larry Berg Consulting

Testimony of Larry Berg

SB 144

On Behalf of Midwest Energy

Before the Senate Local Government Committee

February 17, 2009

Good morning Chairman Reitz and members of the committee. Thank you for the opportunity to provide written testimony in opposition to SB 144 on behalf of Midwest Energy, a customer-owned electric cooperative headquartered in Hays. Midwest Energy serves 48,000 electric and 42,000 natural gas customers in 41 central and western Kansas counties.

SB 144 would make null and void all blanket easements that Midwest Energy has utilized throughout its service territory for many years. Blanket easements have been a common practice, utilized by most utilities to cover entire quarter sections of land as opposed to a specific path of electric and gas lines. Blanket easements were negotiated with landowners who approved these transactions as a common way to deal with utility companies who wanted to cross their land.

We are not clear as to the impact it would have on Midwest Energy to change the rules now. Would these easements become new "strip" easements? Would utility companies have easements at all if this proposed legislation is passed? How much would it cost Midwest Energy and its customer-owners if new easements would have to be obtained? Would litigation be the norm if new easements had to be negotiated? These are questions that SB 144 would raise.

Midwest Energy enjoys an excellent relationship with its customers, communities and local governments. SB 144 in its current form could jeopardize those relationships, in my opinion. Additionally, Midwest Energy is not aware of any problems with blanket easements at this time. However, if they are made aware of problems, they will certainly remedy the problem on an individual basis.

Thank you again for the opportunity to provide you with written testimony in opposition to SB 144.

Larry Berg

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