Approved: March 2, 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 24, 2009, in Room 446-N of the Capitol. Senator McGinn moved to accept the minutes of February 16th and 17th. Senator Wagle seconded the motion. The motion carried.

All members were present except:
Senator Tim Huelskamp- excused
Senator Bob Marshall- excused
Senator Mike Petersen- 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:
Edward Moses, Managing Director, Kansas Aggregate Producers Association
Vicki Koepsel, Director, Saline County Planning & Zoning
Joe Nold, County Commissioner, Dickinson County
Ron Shaver, Assistant City Attorney, City of Olathe
Kim Winn, League of Municipalities

Others attending:
See attached list.

The Committee continued the hearing on **SB 253 - Zoning amendments; protest petitions; mining operations; extraordinary vote not required and SB 254 - Urban area counties; zoning amendments and conditional use permits; protest petitions, other; extraordinary vote not required.**

Edward Moses, Managing Director, Kansas Aggregate Producers Association, testified in favor of **SB 253** & **SB 254.** He explained it would amend zoning and would give greater flexibility. (Attachment 1)

Vicki Koepsel, Director, Saline County Planning & Zoning spoke in opposition to **SB 253 & SB 254** and suggested considering a protest petition if something needs change. (Attachment 2)

Joe Nold, County Commissioner, Dickinson County, testified in opposition to **SB 253 & SB 254.** He explained that leaving K.S.A. 12-757 stand as it now exists does not remove mining interests' ability to respond to what they may consider to be unreasonable action by a local governing body. (Attachment 3)

Richard J. Linn, Deputy County Counselor, Johnson County Kansas, submitted written testimony in opposition to **SB 254**. (Attachment 4)

The hearing was closed.

Mike Heim, revisor, reviewed **SB 257 - Requirements for public improvements by cities outside of city limits**. He explained the bill would amend the statue to establish improvement districts outside city boundaries.

Ron Shaver, Assistant City Attorney, City of Olathe, testified in favor of **SB 257**. He explained the bill would make it easier for cities to create improvement districts requested by residents outside of a city while utilizing the special assessment procedure set forth in K.S.A. 12-6a01 *et.seq*. (Attachment 5)

Kim Winn, League of Municipalities, testified in favor of **SB 257**. She said the bill would make a minor adjustment to the special improvement and assessment law to grant additional flexibility with regard to improvements outside the city limits. (Attachment 6)

Minutes of the Senate Local Government Committee at 9:30 a.m. on February 24, 2009, in Room 446-N of the Capitol.

The hearing was closed.

Discussion continued on **SB 144 Subdivisions; blanket easements, void; exceptions.**
Mark Schreiber, Westar Energy, Director, Governmental Affairs was assigned as the spokesperson for the opponents to **SB 144** he said Mr. Smith and the opponents had exchanged suggested alternative language, but could not come to an agreement. (Attachment 7)

Written testimony submitted by:
Proponent
John T. Smith, Member, Am. Institute of Certified Planners (Attachment 8)

Opponent:
David M. Dayvault, Kansas Independent Oil & Gas Association (Attachment 9)
John B. Rigg, Jr., BP America (Attachment 10)

The discussion and possible action will continue Monday, March 2, 2009.

The next meeting is scheduled for March 2, 2009.

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

LOCAL GOVERNMENT
GUEST LIST

DATE: ~~February~~ 24, 2009

NAME	REPRESENTING
JOE NOLD	DICKINSON COUNTY
Mark Schreiber	Westar
Ken PETERSON	KS Petroleum Council
LON STANTON	NORTHERN NATURAL GAS
Scott Jones	KCPL
Vicki Koepsel	Saline County
FRANK BURNAM	DEPT. OF ADMIN DFM
Woody Moses	KAPA
Leigh Keck	Hein Law Firm
Allen Askew	Federico Consulting
Dan Mays	City of Olathe
Ron Shaver	City of Olathe

Senate Local Government
2/24/09
Attachment 1

TESTIMONY

BEFORE
SENATE LOCAL GOVERNMENT COMMITTEE
SEN. ROGER REITZ, CHAIR
BY
EDWARD R. MOSES, MANAGING DIRECTOR
KANSAS AGGREGATE PRODUCERS ASSOCIATION
ON

SENATE BILLS 253 & 254 CONCERNING THE DEVELOPMENT OF NATURAL RESOURCES

February 16, 2009

WHAT DOES THE BILL DO?

- Amends the requirement for zoning approval on mining operations pursuant to K.S.A. 49-601 to a simple majority.
- Gives local units of government greater flexibility in planning for future needs.
- By eliminating the requirement for a supermajority
- Provides greater resources to the citizens of the area.

ANSWERS GROWING SUSTAINABILITY CONCERNS

Report of the Special Committee on Transportation recommends adoption

While funding a future transportation plan is critical. keeping future costs at a reasonable level is important as well. During the course of its investigations. the Committee was concerned to learn that the cost ofbasic construction materials such as rock. sand and gravel has risen by an average of 154.6 percent from 1996 to 2006. while production has risen only 23.7 percent during the same period. More than 90 percent of asphalt and more than 75 percent of concrete produced contain these materials. This appears to be caused by a noticeable decline in the amount of permitted reserves in our state. The Committee urges both the Governor and the Legislature to review and recommend natural resource development policy designed to streamline access to permitted reserves. An updated policy providing for the safe and sustainable extraction of natural resources will save over $480 million in construction costs over the next ten years.

In Theory Resources are Unlimited

In reality resources are diminishing

- Surface sources of quality aggregate have been used up over the last 80 years.
- Access to Natural Resources is diminishing at an alarming rate
- Urbanization has prevented access to future resources
- NIMBY & BANANA syndromes inhibit further access
- Scarcity of quality deposits. Natural Resources must be mined where they are found

NIMBY OR BANANA SYNDROMES

- Not In My Backyard
- Build Absolutely Nothing Anywhere Near Anyone
- Attitude has made it virtually impossible to permit quality resources
  - Saline County
  - Pawnee County
  - Shawnee County (2)
  - Douglas County
  - Marshall County

Demand However Continues to Grow

- Demand for aggregates is demographically driven
- Every Kansan uses approximately 11 tons of aggregates each year. Or
- Approximately 30 million tons per year
- Wind farm construction takes a lot of sand
- Sand & Gravel prices have gone up 154% over the last ten years
- Aggregate operations serve everyone within a 30 mile radius

Demand

Crushed stone is a major component of the Kansas nonfuel mineral economy. Most of the product is made from limestone units of Pennsylvanian and Permian age that are located in the eastern onethird of the state. To demonstrate the importance of crushed stone, Table 2.1 shows the tonnage, value, and per capita consumption (tons per person) for the state. As with any construction-related commodity, year-to-year variations in the quantity of stone used are due to the economy of the state and, like cement and aggregates, particularly the magnitude of highway-department funding for major roads (see Table 2.1). **Crushed-limestone aggregate sold/used in 1996 amounted to over $100 million with a consumption of nearly 9.5 tons per person.**

TABLE 2.1--Per capita usage of crushed stone in Kansas.

Year	Tonnage in Thousands	Population in Thousands	Value in Thousands	Per capita Use
1920	699	1,769	1,014	0.39
1930	1,249	1,881	1,245	0.66
1940	2,881	1,801	3,673	1.60
1950	7,630	1,905	8,920	4.01
1960	11,814	2,179	15,031	5.42
1970	15,161	2,249	22,406	6.74
1980	17,398	2,364	54,731	7.36
1990	20,800	2,478	79,200	8.39
1991	16,802	2,491	67,249	6.75
1992	17,084	2,515	69,600	6.79
1993	20,732	2,531	90,663	8.19
1994	23,624	2,554	103,416	9.25
1995	22,400	2,565	95,800	8.73
1996	24,420	2,572	106,000	9.49

USES

- Aggregates are construction materials of crushed stone, sand and gravel. About 10 tons of aggregates are required annually for each North Carolina citizen. A typical residential subdivision requires about 300 tons of aggregate per home.

- The single largest market for aggregates is road and street construction, including base and asphalt paving for highways, parking lots and other pavements. **One mile of typical 2-lane asphalt road with aggregate base requires about 25,000 tons.** Other large markets are portland cement concrete for bridges, pavements and building structures, riprap and erosion control stone, and railroad ballast.

- Approximately 50 percent **(70% in Kansas)** of all aggregate is used for publicly funded construction projects? i.e., highways, water and sewer systems, public buildings, airports and other county and municipal public works projects

Source: http://www.geology.enr.state.nc.us/

WHY IS IT GOOD PUBLIC POLICY?

- Gives counties & cities more flexibility in making policy decisions on behalf of all voters. Expands the franchise.
- Reduces displacement or dispersion
- Reduces taxes
- Reduces CO2, NOX, SOX and other particulate emissions

WHY IS IT GOOD PUBLIC POLICY?

- Promotes logical development
- Promotes sustainable construction
- Reduces costs on all construction
- Balances extraction across county and state

SURELY THE NEEDS OF THE MANY OUTWEIGH THE NEEDS OF THE FEW!

- Thank you for the opportunity to present these comments today.
- ?????
- Kansas Aggregate Producers Association
  - 800 SW Jackson - #1408
  - Topeka, Kansas
  - 785-235-1188 0r 785-633-1188

Kansas Aggregate Producers Association

Overarching Sustainability Practices

- KAPA members sustain the communities in which we operate by providing raw materials as natural building blocks for quality of life.
- We are conscious of the need to provide economic, social and environmental value for future generations, and the communities in which we operate.
- We demonstrate a strong and unwavering commitment to safety, health and the environment at our operations.
- We work with appropriate government bodies to establish effective, responsible and balanced laws and other requirements based on sound science.
- We encourage life cycle re-use of products during manufacturing and post-consumer use.
- We maintain adequate aggregate resources in locations that minimize the life cycle impacts of the resource's extraction, delivery and use.
- We encourage proper land use development and planning within communities to ensure long-term aggregate resource availability.
- We adhere to the highest ethical business practices and transparency in all aspects of our operations.
- We recognize that profitability is essential to a sustainable industry and its continued ability to contribute to communities.

Saturday, December 3, 2005

Last modified Tuesday, October 4, 2005 9:39 PM PDT

NIMBY sound and fury

By: RICK REISS - For The Californian

1 NIMBYism is alive and well in the Temecula Valley. NIMBY is the acronym for Not In My Back Yard. BANANA, the ugly twin of NIMBY, stands for Build Absolutely Nothing Anywhere Near Anyone.

Self-absorbed NIMBY and BANANA isolationists exhibit drawbridge mentalities. They establish themselves into communities then slam the doors shut to others.

No construction or new business. No outsiders. No Liberty Quarry project in Temecula.

Recently I took an eye-opening tour of the proposed Liberty Quarry site at the invitation of Gary Johnson of Granite Construction Co.

Much of the rhetoric emanating from the NIMBY Save Our Southwest Hills is just hot air. The 310-acre site is off the busy Interstate 15 freeway, across from the U.S. Border Patrol checkpoint and a firearms range. The site is blocked from public view by a mountain. It is possible to view the site from Temecula ---- if you ride a hot air balloon up to nose-bleed heights.

This quarry is needed for an obvious reason ---- the cost of aggregate, the gravel used in concrete and asphalt, has skyrocketed. These increases stem from construction booms in faraway countries such as China and India. International demand for energy, concrete and steel has driven costs up everywhere.

In the aftermath of the Gulf state hurricanes, the cost of concrete will surge even more as states such as Louisiana and Mississippi reconstruct their decimated cities. This is basic supply-and-demand economics.

While NIMBY and BANANA isolationists frown upon development, aggregate is always needed to renovate our roads and freeways and for new school projects.

A local quarry will benefit the region by reducing the number of transport trucks traveling through the Temecula Valley from outside areas.

Do the math. A local quarry will reduce the freeway miles of large semis transporting aggregate. Fewer freeway miles traveled means less commuting time. Traffic congestion is alleviated and highway wear and tear is reduced. Shorter transportation routes also result in lower transportation costs and reduced truck emissions.

This is a win-win situation.

Some environmentalists bemoan a quarry in proximity to an ecological reserve and a theoretical wildlife corridor. Yet Granite Construction Co. must comply with local, state and federal environmental and air quality regulations to operate the quarry.

So why all of this sound and fury? The Pechanga wildlife corridor is bogus. This corridor theory supposes that wild critters traverse east through the site and cross I-15 to Pechanga.

Let's just rename this "The Roadkill Corridor" since any wildlife crossing the freeway is quickly reduced to a protein

SALINE COUNTY COMMISSION

Board meets Tuesday 9:00 A.M. to 12:00 P.M. - 1:30 P.M. to 4 P.M.
Meeting Room 209 - Office Room 211 - 300 W. Ash

P.O. Box 5040 Salina, Kansas 67402-5040
Phone (785) 309-5825 • FAX: (785) 309-5826
www.saline.org

COMMISSIONERS:
Randall E. Duncan
First District

John A. Reynolds
Second District

Jerry L. Fowler
Third District

February 24, 2009

Senate Local Government Committee
Chairman: Roger Reitz

RE: SB253 and SB254
Zoning amendments; protest petitions; mining operations; extraordinary vote not required

Chairman Reitz and Committee members:

This letter is to let you know that the Saline County Governing Body strongly opposes the changes being proposed in Senate Bill No. 253 and Senate Bill No. 254. In particular, we object to the proposed language found in both bills; e.g. section (g) in SB 253 and section (c) in SB 254 as follows:

> Section (g), SB253: "An ordinance or resolution adopting a zoning amendment for mining operations subject to K.S.A. 49-601 et seq., and amendments thereto, regardless of a protest petition or failure to recommend by the planning commission shall only require a majority vote of all members of the governing body."
>
> Section (c), SB254: "A resolution adopting rezoning or a conditional use permit for mining operations subject to K.S.A. 49-601 et seq., and amendments thereto, regardless of a protest petition or a failure to recommend by the planning commission, shall only require approval by a majority of all members of the board of county commissioners."

Saline County objects to the proposed language for two reasons:

1. The proposed change cannot be made only for mining operations. If this change is approved, it must include all uses that require a zoning change or conditional use permit. That will be a significant change.

2. If the proposed language is adopted, the change will effectively dilute the whole purpose of the planning commission, which is to hold the necessary – and often multiple – public hearings and make a determination on these types of requests. Those determinations, when unprotested, are the final decision for the jurisdiction. When

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protested, the decision of the planning commission must have some merit with the governing body – which the current language requiring a super majority vote recognizes.

Chairman Reitz and committee members, approval of the proposed changes will seriously undermine the planning commission's function and will essentially make all of the planning commission's decisions subject to an appeal process that offers an "easy" answer with a smaller board. It is for these reasons that Saline County strongly urges the committee to deny the proposed changes.

We thank you for your consideration.

BOARD OF COUNTY COMMISSIONERS

Randall E. Duncan, Chairman

Jerry L. Fowler, Vice Chairman

John A. Reynolds, Secretary

DICKINSON COUNTY

109 East First Street, Suite 208, Abilene, KS 67410
Phone (785) 263-3120 Fax (785) 263-2081
www.dkcoks.org

COMMENTS RELATIVE TO SENATE BILL NO. 253
February 24, 2009

The Dickinson County Board of County Commissioners wishes to express its opposition to the proposed amendment to K.S.A 12-757.

There are numerous mining operations in Dickinson County. Our county governing body not only recognizes the importance of those mining operations, we depend upon them for materials critical to performing our own responsibilities in the public's interests. Our actions and interests speak for themselves - we are not anti-mining.

The single action proposed within Senate Bill No. 253 is to remove **only mining operations** from the existing zoning adoption requirements contained in K.S.A. 12-757 when owners of 20% or more of the represented property or 20% or more of the property owners of record within the prescribed notification area file a protest petition.

There are few actions that can have more potential impact upon adjacent or nearby property and property owners than when local governing bodies rule on zoning changes when mining operations are involved.

The current requirements of the base statute are not anti-mining. The current statute does not single out *mining* for special attention. Rather, the current statute gives property owners the tools necessary to require that their local governing bodies be very careful and very certain when making **any** zoning changes that a rational percentage of property owners deem to be of concern to them.

Leaving K.S.A. 12-757 stand as it now exists does not remove mining interests' ability to respond to what they may consider to be unreasonable action by a local governing body.

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Johnson County Legal Department

Testimony Before The

SENATE LOCAL GOVERNMENT COMMITTEE

In Opposition of Senate Bill 254

Presented on Behalf of
The Board of County Commissioners
of Johnson County, Kansas

By

Richard J. Lind
Deputy County Counselor

February 23, 2009

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to present written testimony in opposition of Senate Bill 254, which is a proposed amendment to Johnson County's zoning enabling act (K.S.A. 19-2956 et seq.) (County Act). The proposed amendment would provide an exception to the current process that the submittal of a valid protest petition requires a 4/5ths vote of all members of the Board of County Commissioners (Board) in order to approve a rezoning or conditional use permit, and instead gives favored treatment to certain land uses by allowing approval of such uses by a simple majority vote for rezonings and conditional use permits for mining operations subject to K.S.A. 49-601 et seq. The Board is opposed to the proposed amendment.

Johnson County has its own zoning act, which is applicable only to unincorporated Johnson County, Kansas. First adopted by the Legislature in 1984, at the request of the Board, the County Act has remained mostly untouched in the 25 years since its adoption, and has worked well without much alteration from its original format. The Board is therefore reluctant to support revisions to the County Act, absent the Board having requested an amendment to remedy a perceived local need or problem. Furthermore, prior to amending the County Act, as proposed, the Board has not been given the opportunity to receive input from its Planning Commission, and the citizens in the unincorporated portions of the County, concerning this major change in our zoning procedure, and its perceived effects.

While the Board is cognizant that the Legislature may desire the proposed amendment, in a companion bill (SB 253), in order to remedy some perceived problems in other portions of the

JOHNSON COUNTY ADMINISTRATION BUILDING
Phone: (913) 715-1900

111 South Cherry Street, Suite 3200
Fax: (913) 715-1873

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State, by making it easier to utilize mineral resources that may otherwise remain unused, Johnson County has so far not experienced that problem. The Johnson County Planning Director has indicated that nine (9) active quarries are located in our County, with six (6) inside incorporated areas, and three (3) in the unincorporated areas. Therefore, at this point in time, without the benefit of having first received input from our Planning Commission and the local community, the Board does not see the need to adopt an exception to our zoning process, which grants favorable treatment to certain types of mining operations, in order to ensure access to needed mineral resources.

Briefly, the Board has the following additional concerns about the amendments proposed by SB 254:

1. The phrase "or a failure to recommend by the Planning Commission," which is set forth in the newly proposed subparagraph (c), is problematic for two reasons. First, the County's zoning act and process utilizes township zoning boards, rather than a planning commission, to make recommendations to the Board regarding rezonings and conditional use permits (the Planning Commission mainly recommends amendments to the existing regulations and process, but not current pending zoning applications). Therefore, reference to the Planning Commission is incorrect. Secondly, instead of just substituting township zoning boards (and consolidated zoning boards) for the planning commission, the phrase probably should be deleted altogether. Without the benefit of knowing what the drafter intended by the phrase, it appears to be superfluous language. While the submittal of a valid protest petition does currently require a super majority vote of the Board, the failure of a township or consolidated zoning board to make a recommendation on a rezoning or conditional use permit does not, hence the apparent confusion regarding the perceived necessity of including that phrase.

2. The County Act, both as currently written and as proposed by amendment, contains a uniformity requirement that all zoning regulations shall be uniform for each class or kind of land uses throughout each zoning classification. (See, K.S.A. 19-2960(b)). The Board has concerns then whether the difference in voting requirements for those mining operations subject to K.S.A. 49-601 et seq., and for those mining operations not subject to that statutory act, in some manner violates the statutory requirement to regulate land uses (in this case mining operations) in a uniform manner.

3. Lastly, regardless whether different voting requirements violate the statutory uniformity requirement, the Board is at a loss as to why it is proposed that certain mining operations receive more favorable treatment than other mining operations. If the rationale basis for the difference in treatment is that K.S.A. 49-601 et seq. requires the mine operator to provide a reclamation plan and bond in order to receive a mining permit, while other mines may not have such a requirement, such a distinction may have little effect in unincorporated Johnson County, where our zoning regulations currently require a reclamation plan and bonds for all mining operations, which would nullify the justification of granting certain mining operations, and not others, favorable treatment.

We appreciate your consideration of our concerns, and ask that you oppose the adoption of SB 254.

Thank you.

OLATHE
KANSAS

February 17, 2009

The Honorable Roger P. Reitz, Chairperson
The Honorable Susan Wagle, Vice Chairperson
And Members of the Senate Local Government Committee
Statehouse, Room 446-N
Topeka, Kansas

Re: SB 257

Ladies and Gentlemen:

The City of Olathe respectfully requests your approval of amendments to K.S.A. 12-693 as provided in SB 257. The bill would make it easier for cities to create improvement districts requested by residents outside of a city while utilizing the special assessment procedure set forth in K.S.A. 12-6a01 *et. seq.* The tools provided by SB 257 allow cities to respond more effectively to the demands of growth just outside the city limits without forcing properties to be annexed, creating undue tax burdens on the city's current residents, or adding additional regulatory complexity. The bill would allow a city to make certain public improvements within three miles of the city limits upon approval of the board of county commissioners where the property is located, or upon the city's receipt and approval of a petition signed by 100% of the property owners wishing to be served by the public improvements.

Current Law

The authority currently provided pursuant to K.S.A. 12-693 is two-fold. First, the statute allows cities to make public improvements outside of the city limits, but within three miles of the city limits, if those improvements are undertaken in connection with an improvement district. Second, the statute allows cities to include property located outside of the city limits in improvement districts created pursuant to K.S.A. 12-6a01 *et seq.*, and specifically grants cities the authority to levy special assessments against such property.

K.S.A. 12-693 currently allows cities to construct public improvements outside of but within three miles of the city limits only if the city adopts regulations governing the subdivision of land in the unincorporated area that would benefit from the improvements. This requirement is cumbersome, and records in Johnson County indicate that no city has used the current form of K.S.A. 12-693 to obtain subdivision authority outside its city limits.

K.S.A. 12-693 further provides that even if a city has subdivision authority outside its city limits, a city may not create an improvement district or levy special assessments against property outside of the city limits unless the city receives an improvement district petition signed by the owners of more than half of the property in the unincorporated area.

An Example of the Impact of the Current Law on Growth Surrounding Olathe

The City of Olathe wishes to create an improvement district to construct needed sanitary sewer improvements to serve a rapidly growing area including property both in the Olathe city limits and in the unincorporated area of Johnson County. The improvements would be located in the unincorporated area of the County, but within three miles of Olathe's city limits. The project is multijurisdictional in that it would ultimately serve property in the Olathe city limits, the Olathe future growth area, the Gardner future growth area and Johnson County Wastewater's service territory. Olathe has had positive conversations with Johnson County legal and planning staff, Johnson County Wastewater staff, and certain property owners in the unincorporated area of the County regarding this

proposed project. All parties recognize the potential economic benefits to all jurisdictions if these improvements are constructed.

A majority of the property that will be benefited by these improvements is currently in the unincorporated area of Johnson County. Because Olathe does not have subdivision authority within this unincorporated area of Johnson County, Olathe cannot use K.S.A. 12-6a01 *et seq.* to finance the cost of the improvements through special assessments. Absent annexation of such property, Olathe's city at large will be required to pay for that portion of the improvements which benefit properties in the unincorporated area of the County. This would unfairly burden all Olathe taxpayers with repayment obligations rather than placing that responsibility on the property that is benefited but located in the unincorporated area of Johnson County.

Solution Provided by SB 257

SB 257 provides a practical method to expand the ability of cities to construct public improvements in rapidly growing areas near their borders. The first amendment to section (a) of K.S.A. 12-693 would require that the city obtain the county's consent prior to making such improvements. This allows a majority of affected property owners in the unincorporated part of the county to proceed with a benefit district upon approval of their county commissioners. This also allows counties to cooperate in multijurisdictional projects like Olathe's without giving up subdivision authority.

The second amendment to section (a) of K.S.A. 12-693 allows cities to construct public improvements outside of their borders but within three miles thereof if requested by 100% of the property owners to be served by the improvements. This option streamlines the approval process for a unanimous benefit improvement petition since all property owners have consented to construction of the improvements and levy of the special assessments.

SB 257 clarifies in Section (c) that a petition for improvements to boundary line roads that includes property both inside and outside of the city is sufficient if it contains the signatures of at least 50% of the property owners of all of the property described in the petition. This amendment is intended to more equitably distribute costs of boundary line roads where the county has already consented to the creation of such an improvement district (as is currently required by K.S.A. 12-693).

The changes provided by SB 257 would allow cities to deal more effectively with the demands of growth without requiring properties to be annexed by a city, causing unfair tax burdens on its existing residents, or creating additional regulatory complexity. In this economic environment, it makes sense to clarify and enhance the ability of cities to facilitate growth near their borders in the manner provided by SB 257.

I would be happy to assist or answer questions.

Sincerely,

Ron Shaver
Assistant City Attorney

LKM
League of Kansas Municipalities

300 SW 8th Avenue
Topeka, Kansas 66603-3912
Phone: (785) 354-9565
Fax: (785) 354-4186

To: Senate Local Government Committee
From: Kim Winn, Director of Policy Development & Communications
Date: February 24, 2009
Re: Support for SB 257

On behalf of the member cities of the League of Kansas Municipalities, thank you for the opportunity to appear today in support of SB 257. This bill makes a minor adjustment to the special improvement and assessment law to grant additional flexibility with regard to improvements outside the city limits.

Under the current special improvement and assessment law, cities may make improvements outside the city limits only when the city has adopted subdivision regulations in the area to be improved. SB 257 would authorize two other situations when the city would be allowed to make such improvements: 1) when the county consents to the improvement; or 2) when 100% of the property owners in the area to be benefitted by such improvements have signed a petition requesting the improvements.

We believe that this additional flexibility is appropriate and that there are sufficient protections for the property owners in the areas to be improved. For these reasons, we respectfully request that the Committee recommend SB 257 favorably for passage.

Thank you for your consideration of this legislation. I would be happy to stand for questions at the appropriate time.

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Attachment 6

Westar Energy®

MARK A. SCHREIBER
Director, Government Affairs

2-24-09

Response from Mark Schreiber, assigned to be the spokesperson for the opponents to SB 144.

Mr. Smith and I exchanged suggested language, but could not come to an agreement. Our discussion was always cordial, but there were key points on which we could not agree.

Opponents believe that the system is working. They are very concerned with the use of the terms "void" or "voidable". The easements were legally procured and recorded and to suggest the easements can be voided is not acceptable. The opponents don't believe the abuse that Mr. Smith has suggested is widespread.

Mr. Smith believes the easement holders receive the benefit, but don't take responsibility for helping the landowner when an easement needs reduced. His main point is that the landowners need to be involved whenever the blanket easement is reduced so the landowner's interests are preserved. The opponents believe they do work with the landowners to ensure facilities are properly located, identified and recorded.

When talking with Mr. Smith last night, I am still unclear and I believe he is too, whether his issue might be related to mineral leases as well as to a blanket easement. Leases would be a much more complex issue to resolve.

The opponents believe the current system is appropriate and is working.

Answer to Sen. Kultala's question regarding any costs the utility may charge the landowner, when requested to reduce a blanket easement to a strip easement:

> When approached by a landowner that wants to reduce a blanket easement, Westar Energy provides them a metes and bounds description of our facilities and asks them to provide us a survey from an independent surveyor of their plat showing how the new strip easement is located to their lots, etc. We also charge a flat $500 fee for our expenses.

818 South Kansas Avenue / P.O. Box 889 / Topeka, Kansa
Telephone: (785) 575-8369 / Fax: (785) 575-8119 / Mobile: (7
mark.schreiber@WestarEnergy.com

From: "John T. Smith" <jtsa@liberal.net>
To: "Sen. Roger Reitz" <reitz@senate.state.ks.us>
CC: "Sen. Susan Wagle" <Susan.Wagle@senate.ks.gov>, "Sen. Carolyn McGinn" <C...
Date: 2/23/2009 9:38 AM
Subject: Fw: SB 144 re blanket easements
Attachments: esmt sb144 hearing 022309.pdf

Please accept my apologies; attachment omitted in error from prior email.

----- Original Message -----
From: John T. Smith
To: Sen. Roger Reitz
Cc: Sen. Susan Wagle ; Sen. Carolyn McGinn ; Sen. Bob Marshall ; Sen. Kelly Kultala ; Sen. Tim Huelskamp ; Sen. Mike Petersen ; Sen. Ralph Ostmeyer ; Sen. Oletha Faust-Goudeau
Sent: Monday, February 23, 2009 8:39 AM
Subject: SB 144 re blanket easements

Sen. Roger Reitz, Chm, Senate Committee on Local Govt.

Roger,

In response to the committee's request for more information regarding blanket easements, attached is my letter responding to some questions raised as well as to comments submitted by other supporters of SB 144 since the hearing, comments representing realtors, royalty owners, and city planners.

It appears most concerns are that blanket easements are very one-sided and that the easement holders are reluctant to make changes. The intent of SB 144 addresses, or should address, this by providing:

1) A mechanism that provides some incentive for the easements holders to respond. Notwithstanding some stated intentions regarding how open & understanding they are to land owners concerns, that just doesn't seem to be universal or consistent in practice by the easement holders.

2) That any specific easement drafted not be unilaterally prepared & recorded on the part of the easement holder without land owner input.

My letter contains revised wording that I believe has a greater consensus of acceptance by those concerned with the present situation and supporting SB 144. Wording that hopefully is acceptable to the easement holders too.

Thanks for your consideration,

John T. Smith

cc Committee Mbrs

Senate Local Government
2/24/09
Attachment B

JOHN T. SMITH ASSOCIATES, INC.

Land planning, development & management # investments # real estate brokerage
404 N Kansas Ave # Liberal, KS 67901-3330 # vox/fax 620-624-1834 # jtsa@liberal.net

February 23, 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,

In both the written and verbal testimony presented at the committee hearing on Tuesday the 17th, several questions and concerns were raised regarding blanket easements. Questions that generally had some legitimacy, yet pointed out the problems blanket easements create. The underlying facts and case law, however, seem to overwhelmingly support that blanket easement, whether acquired by purchase, gift, eminent domain, or otherwise, were generally rights of access and use and not rights of ownership. Therein lies the inherent problem, the problem of a "taking" for more than either party originally intended when the initial agreement was consummated, which probably came about as a matter of "We want to do such-n-so on (or across) your land but don't know exactly where yet; can we do that?"

To answer some of the questions raised in the context of the bills proposed wording, it might be helpful to consider a typical situation. By way of example, assume a service provider wants to cross a quarter section of ground and needs an easement for that right, not knowing at the time the exact location of the proposed use. The land owner, consciously or not, gains a general understanding of what is going to be where and agrees to what becomes a blanket easement over his property. The easement holder subsequently determines the use location, constructs the facility, then typically moves on to other matters at hand in the normal conduct of their business. Years may pass; rights may pass. The concerns and problems existing today, now probably between heirs, successors or assigns of the original parties, is simply one of, illustratively, an existing use needing say a 20-30 foot width over a half-mile of property (say the side of a 160 acre quarter section), a requirement of less than 2 acres of land. Yet the current property owner finds himself with the other 158+ acres burdened by the blanket easement and restrictions on the use of his land.

Now consider proposed wording in SB 144 in light of the situation described above.

Concern with loss of the easement.

Testimony indicated concern as to the possibility of SB 144 wording causing the automatic or statutory loss of an easement holder's right. That is not the case. It is apparent the intent of the proposed amendment was not to create that situation as it provides the caveat "***unless*** *the entity holding the easement...provides...and records...a reasonable, definite and specific description of the easement appropriate to its use.*" (Emphasis added.) Nothing is lost with a mutually agreed release of unused land. There may be jeopardy only where there is a failure to recognize that the encumbering or nonuse of land will not likely stand the test of specificity that courts will likely apply. (Ks Ct Appeals; #96,103.)

The language in the Bill does, however, use the word "void" which in law suggests mandatory invalidity on its face, being of no value. Substitution and use of the word "voidable" is possibly more appropriate, as it is generally accepted to mean a transaction is valid but may be avoided or declared void where one party is wronged by the other. (Webster's Dictionary of Law.) This substitution of "voidable" for the word "void" addresses the indicated concern, appears consistent with the intent of the amendment wording that it be operative only in the case of an easement holder's failure to reasonably act, and should be acceptable to all parties.

Concern regarding standards and reasonableness.

It was suggested in testimony that a lack of standards may be a shortcoming to the Bill by use of the wording "...a reasonable, definite and specific description of the easement appropriate for its use." To the contrary, there are most likely differing requirements for, say, a sewer line compared to a high voltage H-pole cross country electrical transmission line, compared to a gas gathering line, compared to a 3-phase underground electric service line, compared to wind turbine generating towers, etc. There are undoubted industry-specific standards of practice, which may even change over time and with technology advances, for each use. Applying current standards to the particular situation would in no way jeopardize the legitimate and necessary access, safety or use for which the easement holder acquired and uses the easement. Utilizing those industry-specific standards in a given situation will result in "...a reasonable, definite and specific description of the easement appropriate for its use." This would be a classic case of the shoes, where one size does not fit all; easements should fit the situation and be of the <u>minimum</u> size necessary to accommodate the existing or intended use.

Concern regarding mandatory action and cost.

Testimony indicated concern that adoption of SB 144 would cause easement holders to initiate on their own a survey and release effort regarding the easements held. It is believed this is clearly not the intent of the proposed wording through the wording "*upon written request of the land owner...*" Notwithstanding the currently proposed wording, some clarity and emphasis might be obtained by breaking the sentence and changing that portion thereof to read "...description of the easement. Provided however, unless the entity holding the easement..." This substitution should address the concerns and be acceptable to all parties.

Concern regarding time of response.

Testimony indicated at least some easement holders have changed their practices and policies regarding the taking of blanket easements without recognition of the need for subsequent definition. Those easement holders are to be commended. But that is not universal. In some states it has become the practice, unknown as to whether it is statutory, regulatory or voluntary, to provide that blanket easement are essentially "void as against public policy and wholly unenforceable" (Missouri for example), unless upon completion of the initial structure/use the holder explicitly fixes the burden, scope of use, and footprint within the express terms of the instrument. In other instances, "*For blanket easements, upon location by GRANTEE of its distribution lines, poles and/or other facilities on said property, the EASEMENT PROPERTY shall be limited to that portion of the property within _____ feet in all directions of Grantee's lines, poles, guys, anchors, or other facilities on GRANTOR'S tract of land described above.*" (The distance is filled in for each instance as appropriate; Texas electric coops for example.) By the definition the location is determined within so many days following completion of construction or placement into service the use or facility intended. This practice recognizes the legitimate value of a blanket easement in the first instance (unknown location), while recognizing that the need for an easement is based on a real, specific, identifiable, and eminent use.

The oppressive nature of blanket easements.

There has been testimony that blanket easements create uncertainty and insecurity when property owners do not know where easements are located. (SWKROA.) That blanket easements are burdensome not only on the land owner but local government as well when the use and location of the easement in not defined, not to mention difficulties in regard to clouds and restrictions on title. (Keller.) And that blanket easements can create delay and increase costs for subsequent land owners in utilization of their property, as well as cause use restrictions and reduced marketability/value to the land. (SWKSBOR.) Even accepting the testimony regarding the declining practice of utilizing blanket easements, it was noted that there are literally thousands of blanket easements in the state and land owners are at the mercy of the easement holders as to how the land owner can use their property.

Summary and solution.

Of paramount importance to the easement holder is safety, access, and location for their existing or imminently intended uses. Of paramount importance to the land owner is a means to establish certainty of location of the existing or imminently intended use, with participation in its determination, and the subsequent freedom of use for the remainder of the property. SB 144 provides the framework for lessening the inherent problems created by blanket easements while recognizing the rights and interests of both the easement holder and the land owner.

Using Section 2 (19-2633) of SB 144 as illustrative, change the italicized wording of each Section 1, 2, & 3, respectively, to read substantially as follows:

"For any ~~subdivision submitted as provided herein~~ *land* which contains a blanket easement, the easement shall be ~~void~~ *voidable* as against public policy ~~and wholly unenforceable~~ where there is no reasonably defined or expressed use and the recorded description of the easement

does not include a definite and specific description of the easement~~,~~. *Provided, however,* unless the entity holding the *blanket* easement, *shall within 30 days* upon written request by the property owner, provides the property owner *a written description as to use and location, allowing the owner not less than 30 days in which to review or object to the terms of such description,* and records in a timely manner a reasonable, definite and specific description of the easement appropriate for ~~its~~ *the easement holder's* use."

Include in SB 144 a Section 4 amending 58-2271 to read as follows:

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 against public policy 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, the grantee or assignee of record, within 20 days after requested by the owner of the property subject to the easement, shall file a release of the easement with the register of deeds of the counties in which the property is located.

(c) A grantee or assignee holding a blanket easement shall within 30 days upon written request by the property owner provide the property owner a written specific description as to any existing use and location, allowing the owner not less than 30 days in which to review or object to the terms of such description, and record in a timely manner with the register of deeds of the counties in which the property is located a reasonable, definite and specific description appropriate for the easement holder's use.

~~(c)~~ *(d)* 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) *or (c)*, 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 $500*0*, 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)~~ *(e)* As used in this section, "pipeline" means any pipeline designed to deliver an energy product other than for sale at retail.

Thank you for your consideration,

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

\esmt sb144 hearing 022309

February 19, 2009

Senator Roger Reitz, Chairman
Senate Local Government Committee
300 SW 10th Avenue, Room 261-E
Topeka, KS 66699

Dear Chairman Reitz:

The Local Government Committee is considering Senate Bill 144 which would hold blanket easements as void and against public policy. KIOGA opposes passage of SB 144 for the reasons described below.

An oil and gas lease grants the lessee the rights for the reasonable use of the surface to conduct its exploration and production activities relating to oil and gas. Most oil and gas leases specifically provide for use of the surface for purposes of ingress and egress, construction of gathering lines, tanks, electrical lines, metering facilities, among other uses. The lessee pays consideration at the beginning of the lease for these rights. Senate Bill 144 would alter that contractual arrangement.

Oil and gas exploration and production activities are conducted over an extended period of time and each successive act of oil and gas development is dependent on those events which have preceded it both on and off the lease. The plans for the use of the surface can seldom be fully described at the beginning of the lease term nor can they be determined definitely upon the demand of the surface owner at some time subsequent to the beginning of the lease term as contemplated by SB 144. If the surface owner has concerns about use of the surface, the time to discuss this is prior to entering into the contract. Indeed this is frequently done and it is quite common to find surface use restrictions stated in the oil and gas lease. This is as it should be as all terms of the contract should be understood and agreed to by both parties prior to the time that the contract is entered into. Unless specific surface use restrictions are stated in the oil and gas lease the rights for the use of the surface remain general in nature and would likely fail the "definite and specific" test contemplated in SB 144.

The law recognizes that the mineral estate cannot be accessed without use of the surface estate. However Kansas law has developed such that the relationship between the mineral owner and surface owner is that of mutual accommodation. Each of these two parties is to consider the existing uses of the other party when planning his activities. SB 144 specifically relates to real estate development of the surface estate. Any surface owner wishing to engage in such an activity on lands encumbered by an oil and gas lease has either acquired those lands subject to a prior easement or has granted that easement himself. Those rights were actually or constructively known by him as they are of public record.

SB 144 would invalidate certain contract rights held by oil and gas lessees. If this were to be passed, the Legislature would be favoring one class of property owner over another. We urge that you do not advance SB 144.

Very truly yours,

David M. Dayvault
Kansas Independent Oil & Gas Association

DMD:da

Senate Local Government
2/24/09
Attachment 9

Roger Reitz - SB 144 - "Blanket Easements"

From: "Rigg, Jack B" <Jack.Rigg@bp.com>
To: <Roger.Reitz@senate.ks.gov>
Date: 2/16/2009 5:31 PM
Subject: SB 144 - "Blanket Easements"
Attachments: [Untitled].pdf

Sen. Reitz:

As you can see from the attached, BP has significant concerns about SB 144 as introduced. It is my understanding that the Senate Local Government Committee will consider this bill tomorrow morning.

<<[Untitled].pdf>>
We have provided a copy of this letter to Sen. Morris and other members of the Committee. Please let me know if I can otherwise provide any information about this issue.

Thank you.

Jack Rigg, Jr.
BP America
Office: 281-366-3983
Cell 281-687-5614

Senate Local Government
2/24/09
Attachment 10

bp

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John B. (Jack) Rigg, Jr.
Vice-President
US Exploration & Production

February 16, 2009

Hon. Roger Reitz, Chairman
Senate Local Government Committee
State Capitol Building
300 SW 10th St.
Topeka, KS 66612

Re: SB 144 – Blanket Easements

Dear Senator Reitz:

It has come to our attention that the Senate Natural Resources Committee will consider SB 144 on Tuesday, February 17. Unfortunately, as introduced, SB 144 could create uncertainty and litigation affecting our operations in Kansas, so we cannot support SB 144 or the companion measure, HB 2124.

As you know, BP is a significant oil and gas producer in Kansas, and we operate a significant number of gathering lines, pipelines, and other facilities that were installed beginning in the 1950s, the presence of many of which were recorded using blanket easements While conflicts may arise regarding surface development – especially when the mineral estate underlies a severed surface estate -- we work diligently with surface owners to resolve any differences while assuring protection of public health and safety and the environment. Those cooperative relationships help assure that the surface owner's existing or proposed activities can be conducted safely, and need to be encouraged. The proposed legislative declaration that "blanket easements" are "void as against public policy and wholly unenforceable" will, we believe, discourage these cooperative efforts and lead to unnecessary conflicts and litigation.

Of equal importance, based on our initial review of the bill, we are concerned that SB 144 as introduced could apply to oil and gas production facilities, including on-lease gathering lines and other facilities needed to allow production of the resource. These facilities are constructed pursuant to surface use rights granted under standard oil and gas leases and mineral deeds, which may be construed as blanket easements. The proposed bill may therefore jeopardize the mineral owner's or lessee's property rights by voiding the right to reasonable use of the surface and thus affect the basic oil and gas lease and mineral deed. The Kansas Supreme Court has held that "under an oil and gas lease, the lessee has the implied right to make reasonable use of the surface in order to develop the land for oil and gas." *Thurner v. Kaufman*, 237 Kan. 184, 699 P. 2d. 435 (1984). The same right is enjoyed by the owner of the mineral estate. *Brooks v.*

Mull, 147 Kan. 740, 746-47, 78 P. 2d 879, 883 (1938). BP believes that it has vested property rights for the reasonable use of the surface which should not be disturbed by this proposed legislation.

At the very least, BP recommends that the Committee carefully study and understand the potential implications of SB 144, and consider whether more reasonable mechanisms are available to address the concerns of severed surface owners. If the Committee decides to address concerns about blanket easements, you may also want to consider prohibiting unsafe encroachments on existing facilities by surface developers. We will be more than willing to participate in that process.

Please accept my regrets that I cannot be present to participate in Tuesday's hearing. We will continue to follow this issue with interest, and I look forward to discussing it in detail with Senator Morris and you and the other members of the committee.

Thank you again, and best wishes.

Sincerely,

John B. Rigg, Jr.