



Testimony Provided To

Senate Utilities

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In Opposition to Senate Bill 323

The Kansas Energy Lease Disclosure Act

On behalf of the Advanced Power Alliance, an association of energy developers, manufacturers, commercial and industrial customers, engineering firms and financial institutions and investors, I rise in opposition to SB 323.

The freedom to contract is not a Republican or Democratic idea; it is not just Kansan; it is not simply American – the freedom to contract is central to private property and underlies the entire economic system that is a foundational pillar of the United States of America. Government intervention into that freedom to contract should never be done lightly and should be done as little as possible.

SB 323 sets out a number of ways in which government interferes with the private contract process. From stipulating that a cover letter is required, with font size delineated, to telling landowners they cannot even lease their property to hunt or telling landowners that they must continue doing what they are doing with their property at the point of contract and can never change, SB 323 is a list of ways in which government dictates how two private entities must enter into a contract.

There are times when private contracts need clarification. I can recall a few times during my tenure in the Legislature when we were asked as the state to provide input on oil and gas leases. However, in each of those situations there was a critical difference with what is happening in SB 323. In those conditions, we were being asked to provide clarification by either one or both of the parties in the contract.

In the case of SB 323, the parties themselves have not asked for any changes at all. These changes are being pushed by individuals outside the contract process. Furthermore, these third-party interests do not want these contracts to proceed. Does the state really want to adulterate private contracts on behalf of those that don't support those private contracts?

Consider: in Section 1, the bill requires that "prior to construction" these new elements be met. Section 1 would retroactively nullify thousands of contracts already in existence, where consideration (money) has been given, and construction has not yet taken place – and also *where the parties themselves do not want*

the contract to be nullified. Who volunteers to drive around Kansas telling landowners they no longer have valid leases and they need to pay back any money they received? In an era of low employment that might be a tough job to fill.

Requiring, as SB 323 does, that the contract state that neighbors can talk to each other, is absurd. For starters, until a contract is entered into neighbors are free to discuss whatever they like, because no contract exists. It is only after a contract is signed that it may require a nondisclosure agreement – which is also common in oil and gas leases. Is the state going to eliminate non-disclosure agreements (NDAs) in oil and gas leases as well?

SB 323 also includes language requiring a “facility agreement”, which is an entirely undefined legal term that is confusing at best. The “facility agreement” requires that neither the developer – *nor even the landowners themselves* – can collect fees from hunting on the property. That question – “Can I still hunt on my land or lease it to be hunted?” – is almost always asked during the lease process, is almost always spelled out in the lease, and I know of no development lease in which hunting leases were prohibited.

Freedom to contract between two private parties is central to private property ownership. Interfering with those contracts on behalf of individuals outside the contract is dangerous, clumsy, and runs contrary to private and free enterprise.

I urge the committee to reject SB 323.