

MINUTES OF THE HOUSE LOCAL GOVERNMENT COMMITTEE

The meeting was called to order by Chairman Steve Huebert at 3:30 p.m. on February 15, 2011, in Room 144-S of the Capitol.

All members were present except Representatives Lane and Worley, both of whom were excused.

Committee staff present:

Martha Dorsey, Kansas Legislative Research Department
Eunice Peters, Office of Revisor of Statutes
Florence Deeter, Committee Assistant

Conferees appearing before the Committee:

John T. Smith, J.T. Smith Associates, Inc.
Mark Schreiber, Government Relations, Westar Energy
Brent Sonnier, OXY USA
Jack Glaves, Panhandle Eastern Pipeline Company
Len Stanton, Northern Natural Gas Company (written only)
Nicholas Hetman, Southern Star Central Gas Pipeline, Inc. (written only)
E. R. (Dick) Brewster, BP America (written only)
Brad Smoot, Attorney
Norman Pishny, Johnson County Farmer
Derek Sontag, Executive Director-Kansas, Americans for Prosperity (written only)
Erik Sartorius, Overland Park
Don Moler, Kansas League of Municipalities
Whitney Damron, City of Topeka
Jennifer Bruning, Overland Park Chamber of Commerce (written only)

Others attending:

See attached list.

The Chair opened the hearing on **HB 2187 - Platting land in unincorporated areas; certain counties** and **HB 2186 - Planning and zoning; blanket easements, subdivisions; void, exceptions.**

Staff Eunice Peters explained the provisions of **HB 2187**, saying that the owner of land outside a city or county planning jurisdiction is free to sub-divide land. Regarding **HB 2186**, she stated that the bill sets out regulations for platting or sub-dividing property and includes a provision making blanket easements unenforceable where there are no definable easement specifications.

John T. Smith, J.T. Smith Associates, Inc., after noting that the bills deal with two separate issues, spoke in support of **HB 2187**--the right of a landowner to sub-divide land. He said that the right to subdivide one's land extends back through the years—long before the permissive right of local units of government was granted to regulate property usage; the bill clarifies a vagueness in judicial decisions so that the right of a property owner to subdivide land is restored (Attachment 1).

Regarding **HB 2186**, Mr. Smith said the bill requires the easement holder to more specifically identify and record a defined location for the easement. He gave a brief history of blanket easements and noted the current problems with blanket easement holders who have no current use for the easement but are reluctant to relinquish it. He said the bill is a reasonable attempt to address blanket easement problems.

Mark Schreiber, Government Relations, Westar Energy, speaking as an opponent of the bill, addressed the issue of easements; he said that granting blanket easements was routine practice in the 1950s. A transmission or a pipeline company would negotiate a blanket easement, knowing the general area but not the specific location of a proposed line. **HB 2187** will void existing, legal contracts unless a written request is made to reduce the blanket easement. Further, the bill does not allow for recovery of costs. Current practice is for utilities to negotiate strip easements. Currently, for blanket easements, landowners and developers contact a utility company to modify a blanket easement before platting sub-division lots (Attachment 2).

Brent Sonnier, OXY USA, speaking in opposition to the bills, declared that rendering blanket easements unenforceable will irreparably impair oil and gas operations in the state (Attachment 3). He explained that the random nature of oil and gas exploration makes restrictive easements, at best, onerous, and, at

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worst, untenable. He said the bills will produce lawsuits to protect the business rights of gas and oil companies.

Jack Graves, Panhandle Eastern Pipeline Company, also spoke in opposition to the bills, saying that by fiat making legally negotiated easements unenforceable creates a bad precedent and will result in unnecessary litigation (Attachment 4). He suggested a better alternative would be to confer with utility companies to develop amendatory language recognizing the sanctity of contract principles.

Written testimony in opposition was provided by:

Len Stanton, Northern Natural Gas Company (Attachment 5);
Nicholas Hetman, Southern Star Central Gas Pipeline, Inc. (Attachment 6); and
E. R. (Dick) Brewster, BP America (Attachment 7).

The hearing on **HB 2186** and **HB 2187** was closed.

The Chair opened the hearing on **HB 2294 - Annexation procedures; deannexation; board of county commissioners duties; election required, when; homestead exemption; appeal process.**

Staff Eunice Peters briefed the committee on the bill, saying that the bill would make a number of changes and additions to annexation law:

- Requiring homestead rights to continue after annexation;
- Restricting unilateral annexation if county commissioners deem the annexation to have an adverse effect on the county;
- Requiring a city, as a part of annexation, to submit a plan for extending services, allowing for de-annexation if the city fails to provide these services;
- Prohibit annexation of farm ground of 21-plus acres without the owner's consent;
- Nullify a bilateral election if a majority of the annexed voters vote to oppose the annexation.

Brad Smoot, Attorney, representing a group of rural landowners (Annexation Reform Coalition), testified in support of the bill. He stated that the bill is a result of years of study by the legislature and that a version of the bill was passed by the legislature but vetoed by Governor Parkinson (Attachment 8). He explained that Kansas law has two statutes that allow municipal annexation (**K.S.A. 12-520** and **K.S.A. 12-521**). The former allows a city to annex land when the owner consents. The latter allows a city to annex land without an owner's consent and without a public vote, as long as the county commission approves. The bill is an effort to place reasonable limits on the authority of local units of government to annex under the latter statute. The 21-acre limit and the requirement of a vote are safeguards built into the bill to protect areas from involuntary annexation. He also noted two new provision in the bill: recovery of attorneys' fees and the preservation of Homestead Exemption rights. Mr. Smoot cited anecdotal evidence to bolster the need for the bill.

Norman Pishny, Johnson County Farmer, expanded on Mr. Smoot's comments about the Homestead Exemption, stating that the proposed bill will protect the landowner's Homestead Act rights until the land is sold and will bring annexation laws in sync with the Kansas Constitution (Attachment 9).

Derek Sontag, Executive Director-Kansas, Americans for Prosperity submitted written testimony as a proponent (Attachment 10).

Erik Sartorius, representing the city of Overland Park, spoke in opposition to the bill, saying that even if the county commissioners approve a city's proposed annexation, a small group of voters can nullify the proposal for at least four years. Further, he said that any proposed annexation of more than 21 acres of agricultural land cannot be accomplished without the consent of the landowner, a provision that can stultify economic growth in certain areas. Agricultural land can still be farmed even if it is inside the city boundaries. Mr. Sartorius also objected to awarding of attorneys' fees to the prevailing side, commenting that the provision does not reflect traditional Kansas law (Attachment 11).

The meeting was recessed at 5:00 p.m. in order for members to attend a State of the Kansas Judiciary speech in the House Chamber. The committee was reconvened at 5:45 p.m.

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Don Moler, Kansas League of Municipalities, speaking in opposition to the bill, stated that the bill will eliminate most provisions of **K.S.A. 12-521** and reverse years of public policy in the state (Attachment 12). He said that the voting provision, motivated by those whose primary concern is self-interest, would replace the decision-making of county commissioners, who have a broader perspective and wider concern for the interests of the community at large.

Whitney Damron, representing the City of Topeka, noted several problems with the bill. He said that the retroactive aspect of the bill is unwarranted (Attachment 13). Further, the voting process regarding annexation allows voting by those unaffected by the annexation process (apartment dwellers, tenants, non-owner residents), and the 21-acre limitation is arbitrary and limits a city's ability to manage growth. Finally, traditionally Kansas law requires each party to pay their own attorney fees.

Doug Mays, offering testimony in opposition to the bill, noted that the bill blurs the distinction between voters' rights and landowners' rights (Attachment 14). He cited examples to show that the bill, by failing to make that distinction, is a defective bill.

Jennifer Bruning, Overland Park Chamber of Commerce, presented written testimony opposing the bill (Attachment 15).

The meeting was adjourned at 4:50 p.m. The next meeting is scheduled for Thursday, February 17, at 1:00 p.m. in Room 144-S of the Capitol.