



**Neutral Written Only Testimony Concerning HB 2589**  
**Laura Lutz, Director, Government Affairs, Evergy**  
**For the House Committee on Energy, Utilities and Telecommunications**

**February 8, 2024**

Thank you, Mr. Chairman and members of the committee for the opportunity to comment on HB 2589. Evergy does not oppose HB2589 but, like the Kansas Municipal Utilities and Kansas Electric Cooperatives, Inc., is concerned with the legal risks posed by law enforcement's placement of devices on its utility poles. Evergy, at the request of the Wichita Police Department and the City of Wichita, suggested language for HB 2589 intended to fully cover any liability of utilities resulting from the placement and operation of any type of pole attachment by law enforcement.

Liability protection for utilities is needed because law enforcement agencies and municipalities cannot privately indemnify utilities under Kansas law. In 1979, Kansas passed the Kansas Tort Claims Act (the "KTCA"), in which it waived sovereign immunity and consented to be sued under limited circumstances. K.S.A. 75-6101 *et seq.* At the same time, it repealed a statute that said that cities waived their governmental immunities by purchasing insurance. K.S.A. 74-4714. This indicates legislative intent *not* to allow cities to waive their immunities and defenses by purchasing insurance. The KTCA allows a municipality to purchase insurance, but cities are also only authorized to purchase insurance for specific purposes enumerated in the statute and these do not include indemnification of private entities. K.S.A. 75-6111.

The language of HB 2589 is intended to fully indemnify utilities that choose to allow law enforcement to attach equipment to their utility poles. That said, pole attachment policies can vary from utility to utility, and we acknowledge that other utilities who may be impacted by this bill have questions and concerns that deserve consideration.

Thank you again for the opportunity to share our comments regarding HB 2589. We are certainly willing to work through questions raised during discussion on this bill, and will gladly provide additional information at the committee's request.