



**House Committee on Agriculture  
Testimony in opposition to HB 2531**

February 9, 2022

To: Chairman Rahjes & Members of the House Committee on Agriculture

I am Darryl Lutz, Director of Public Works & County Engineer for Butler County, Kansas. This testimony today is offered on behalf of Butler County, Kansas in opposition to HB 2531.

I have served as County Engineer for Butler County for nearly 31 years. In my capacity as County Engineer, I am responsible for managing and permitting public utility construction in and across public road rights-of-way in the unincorporated areas of the County. Butler County, and I venture to say many Counties in Kansas, has never allowed private lines to be buried or installed in public road rights-of-way. State statute as well as case law has limited the use of public road rights-of-way related to non-road activities for public utilities and for certain pipelines and activities that meet the category of "public interest".

I have a number of concerns related to the proposed legislation.

- Public road rights-of-way for County roads and Township roads in Kansas are owned in fee title by adjacent property owners. These rights-of-way are granted in good faith by property owners for the purpose of building and maintaining roads and bridges for public use. Counties have only been allowed to permit the use of public road rights-of-ways for public utilities by virtue of statute including more recently large monopolies for communications and broadband services. I believe the only use that should be allowed on road rights-of-way are legitimate public utilities subject to the first right of use for road purposes and for gas, petroleum and water lines that have to cross those public roads.
- Most public road rights-of-way are narrow and space is very limited for use by public utilities. Does the public utility get first right of use? How will conflicts be managed?
- Who will be responsible for making sure private lines are enrolled with the Kansas one-call system? Any person or company constructing a buried line or aerial line on public right-of-way needs to be required to be a member of the one-call system and to properly register all lines for notification and locating purposes.
- Who becomes responsible for the line with a change of ownership?
- Installation of buried livestock wastewater lines creates a liability exposure for contamination of ground in the right-of-way. If a line ruptures or leaks, there is a high

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Darryl C. Lutz, P.E., Director of Public Works / County Engineer

likelihood of contaminating waterways and water impoundments or creating a nuisance for adjacent homeowners.

- Installation of livestock wastewater lines can create conflicts with current regulations for public water supply lines adjacent to or crossing sanitary sewer lines.
- Who will set standards for construction and material types? Public utility lines and pipelines are subject to national minimum standards and state/national regulatory requirements for construction and materials to protect public safety and to minimize the potential for release of product that could cause pollution or environmental damage.
- How is ownership and contact information for the buried private lines to be maintained and kept up to date? This is important in the event of an emergency for timely response. Will the owner of the line have sufficient financial capacity to make repairs and to provide cleanup and repair of damage? If not, the public would have to take on that responsibility and essentially sue the owner for recovery of costs.
- What happens to a private line placed on a public road if the road right-of-way is vacated? Butler County has several miles of public roads opened on paper that from time to time the adjacent property owners request the County to vacate.

There are a lot of issues that this legislation would create for counties and for legitimate public utilities. I request this committee to not pass this bill out of committee.

Thank you for the opportunity to present this written testimony on behalf of Butler County.

Respectfully submitted,



Darryl C. Lutz, P.E.  
Director of Public Works