



PUBLIC WORKS

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February 9, 2022

Ken Rahjes, Chairman
House Agriculture Committee
State Capitol, Room 112-N
Topeka, KS 66612

Re: Written Neutral Testimony on HB 2531
John Ellermann, Riley County Director of Public Works

Dear Chairman Rahjes and Members of the Committee:

This is my neutral written testimony regarding HB 2531. As the Riley County Director of Public Works, the current form of HB 2531 concerns me. But these concerns would be eliminated by a few amendments I will describe today. My proposed amendments appear on my attachment as "tracked changes." I offer them for this committee's consideration.

Section 1(c) currently requires any pipeline applicant to provide their application only to the county clerk. I believe it's important any such application be provided also to the county public works department or road and bridge department. (See attachment) Requiring such additional notice will help ensure the county has time to comply with the deadline for a decision by the board of county commissioners.

Section 1(c) currently only provides 60 days from the date of application receipt for the board of county commissioners to "approve or deny" any pipeline application. But it can take more time for the public works or road and bridge department to evaluate an application and complete any necessary discussions with the township. I believe 90 days is more realistic. (See attachment)

Section 1(f)(1)(A) currently is the first of several listed requirements a board of county commissioners or board of township trustees may place upon a successful pipeline applicant. But that current list does not authorize the requirement of a bond or cash security sufficient to pay for any damage to the right-of-way or road caused by the applicant's pipeline. It is now routine for Riley County to require such a security for damage. Other counties do the same. I believe this is an important protection for local taxpayers which should be explicitly provided in the final form of HB 2531. (See attachment)

My final concern is the current form of HB 2531 does not require pipeline applicants to participate in the state's "one call" system. That matters because any agricultural use pipeline authorized by HB 2531 could be used to carry into the "right-of-way" or across or under the road, an electrical line or natural gas. In order to protect the safety of county or township road crews working on the road or in the "right-



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of way”, they must know precisely where any such new pipeline is located. Additionally, those other private citizens or businesses with pipelines already in the “right-of-way” or across or under the road must know, in advance of their work, where any new pipeline is located. This public safety issue is addressed by my proposed amendment to Section 1(f)(1)(B). (See attachment)

Thank you for allowing me to offer my neutral concerns regarding HB 2531.

Sincerely,

A handwritten signature in blue ink that reads "John Ellermann". The signature is fluid and cursive, written over a horizontal line.

John Ellermann, Director of Public Works

cc: Board of Riley County Commissioners

HOUSE BILL No. 2531

By Committee on Agriculture

1-24

1 AN ACT concerning counties and townships; relating to rights-of-way;
2 authorizing certain persons to use the right-of-way of any county road
3 or township road to install, maintain and operate a pipeline for
4 agricultural activities.

5
6 *Be it enacted by the legislature of the State of Kansas:*

7 Section 1. (a) Upon approval by the board of county commissioners,
8 any person engaged in an agricultural activity may construct, maintain and
9 operate pipelines in pursuit of an agricultural activity along, upon, under
10 and across the right-of-way of any county road, as defined in K.S.A. 68-
11 101(c), and amendments thereto, or any township road, as defined in
12 K.S.A. 68-101(e), and amendments thereto, in conformity with the laws
13 and regulations of the state of Kansas and the county in which the pipeline
14 is located.

15 (b) Except for pipelines installed in violation of an express
16 prohibition of the board of county commissioners in effect at the time of
17 such installation, all pipelines for use in an agricultural activity installed
18 along, upon, under and across a right-of-way of county or township road
19 prior to the effective date of this section are deemed to have been
20 authorized by the board of county commissioners and are ratified as
21 permitted uses of such rights-of-way.

22 (c) Any person engaged in an agricultural activity may request the
23 board of county commissioners to approve a pipeline described in
24 subsection (a) by submitting a written application to the county clerk, and
25 to the county public works department or county road and bridge department,

26 The application shall provide the location, design and specifications of the
27 pipeline. Any application to use or occupy a specific portion of a road
28 right-of-way shall not be denied or approved with conditions without
29 reasonable notice and an opportunity for a public hearing before the board
30 of county commissioners. The board of county commissioners shall
31 approve or deny the application by resolution within 960 days of receipt by
32 the county clerk. A failure to approve or deny the application by resolution
33 within 960 days shall be deemed the approval of the application. Any
34 approval or denial may be appealed pursuant to K.S.A. 19-223, and
35 amendments thereto.

36 (d) Any decision made by the board of county commissioners
37 pursuant to subsection (c) shall be:

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1 (1) Limited to whether the pipeline interferes with public travel upon
 2 the road or the ability of the county or township to maintain the road or
 3 road right-of-way, and
 4 (2) reasonable and not arbitrary, capricious or discriminatory.
 5 (c) Any pipeline permitted under this section shall be maintained by
 6 and at the expense of the owner installing or operating such pipeline.
 7 (f) (1) A county commission or board of township trustees may
 8 require the owner of a pipeline approved under this section to:
 9 (A) Repair all damage to a road or road right-of-way caused by the
 10 activities of such owner, or of any agent, affiliate, employee or
 11 subcontractor of such owner, while occupying, installing, repairing or
 12 maintaining the pipeline in a road or road right-of-way and provide a bond,
 13 or cash security sufficient to pay for such damage ; and
 14 (B) participate in the State of Kansas' "One Call" system.
 15 (CB) return the road and road right-of-way to its functional equivalence
 16 before the damage pursuant to the reasonable requirements and
 17 specifications of the county or township.
 18 (2) If the owner fails to make the repairs required by the county or
 19 township, the county or township may make such repairs and charge the
 20 owner the cost of such repairs.
 21 (3) If a county or township incurs damages as a result of a violation
 22 of this subsection, then the county or township shall have a cause of action
 23 against the owner for such violation of this subsection and may recover the
 24 county's of township's damages, including reasonable attorney fees, if the
 25 owner is found liable by a court of competent jurisdiction.
 26 (g) If requested by a county commission or board of township
 27 trustees, in order to accomplish construction and maintenance activities
 28 directly related to improvements to the road or road right-of-way, an
 29 owner of a pipeline approved under this section shall promptly relocate or
 30 adjust the pipeline within the road or road right-of-way at no cost to the
 31 county or township. Such relocation or adjustment shall be completed as
 32 soon as reasonably possible within the time set forth in any request by the
 33 county or township for such relocation or adjustment. Any damages
 34 suffered by the county, township, or its contractors as a result of such
 35 pipeline owner's failure to timely relocate or adjust its facilities shall be
 36 paid by such owner.
 37 (h) For the purposes of this section, "agricultural activity" means the
 38 same as in K.S.A. 2-3203, and amendments thereto
 39 (i) Nothing in this act shall supplant any local, state or federal law
 40 regulating the transportation of any substance.
 41 Sec. 2. This act shall take effect and be in force from and after its
 42 publication in the statute book.

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