

As Further Amended by House Committee

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Session of 2022

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

16 **(2) (A) In any county that has adopted a county road unit system**
17 **pursuant to K.S.A. 68-515b, and amendments thereto, the board of**
18 **county commissioners of such county shall accept applications,**
19 **approve or deny such applications and oversee any approved pipeline**
20 **in accordance with this act.**

21 **(B) In any county that has not adopted a county road unit system**
22 **pursuant to K.S.A. 68-515b, and amendments thereto, the applicable**
23 **board of township trustees shall accept applications, approve or deny**
24 **such applications and oversee any approved pipeline in accordance**
25 **with this act.**

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

33 (c) Any person engaged in an agricultural activity may request the
34 board of county commissioners **or board of township trustees** to approve

1 a pipeline described in subsection (a) by submitting a written application
2 to the county clerk. **The person who makes such a request and submits**
3 **such application shall be the owner of such pipeline upon approval of**
4 **such pipeline in accordance with this act.** The application shall provide
5 the location, design and specifications of the pipeline. **The application**
6 **shall also provide the location of all locatable underground facilities in**
7 **the area of the work and in the vicinity of the excavation. The**
8 **governing body shall give written notice to each owner of such**
9 **underground facilities and the owner of any land that is located within**
10 **a quarter of a mile of such excavation.** Any application to use or occupy
11 a specific portion of a road right-of-way shall not be denied or approved
12 with conditions without reasonable notice and an opportunity for a public
13 hearing before the board of county commissioners **or board of township**
14 **trustees.** The board of county commissioners **or board of township**
15 **trustees** shall approve or deny the application by resolution within ~~60~~ **90**
16 days of receipt by the county clerk. A failure to approve or deny the
17 application by resolution within ~~60~~ **90** days shall be deemed the approval
18 of the application. Any approval or denial may be appealed pursuant to
19 K.S.A. 19-223, and amendments thereto.

20 (d) Any decision made by the board of county commissioners **or**
21 **board of township trustees** pursuant to subsection (c) shall be:

22 (1) Limited to whether the pipeline interferes with public travel upon
23 the road, **the management of conflicting uses of the road right-of-way**
24 **or the ability of the county or township to maintain the road or road right-**
25 **of-way;** and

26 (2) reasonable and not arbitrary, capricious or discriminatory.

27 (e) Any pipeline permitted under this section shall be maintained by
28 and at the expense of the owner installing or operating such pipeline. **Such**
29 **owner shall provide notice to the county or township of any**
30 **maintenance activity that may require the temporary closing of a road**
31 **or obstruction of traffic.**

32 (f) (1) A county commission or board of township trustees may
33 require the owner of a pipeline approved under this section to:

34 (A) Repair all damage to a road or road right-of-way caused by the
35 activities of such owner, or of any agent, affiliate, employee or
36 subcontractor of such owner, while occupying, installing, repairing or
37 maintaining the pipeline in a road or road right-of-way; ~~and~~

38 (B) return the road and road right-of-way to its functional equivalence
39 before the damage pursuant to the reasonable requirements and
40 specifications of the county or township; **and**

41 (C) **provide bond or liability insurance to cover costs of pipeline**
42 **removal if pipeline ownership should be abandoned or if the owner**
43 **should become deceased.**

1 (2) If the owner fails to make the repairs required by the county or
2 township, the county or township may make such repairs and charge the
3 owner the cost of such repairs.

4 (3) If a county or township incurs damages as a result of a violation
5 of this subsection, then the county or township shall have a cause of action
6 against the owner for such violation of this subsection and may recover the
7 county's ~~of~~ or township's damages, including reasonable attorney fees, if
8 the owner is found liable by a court of competent jurisdiction.

9 (g) If requested by a county commission or board of township
10 trustees, in order to accomplish construction and maintenance activities
11 directly related to improvements to the road or road right-of-way, an
12 owner of a pipeline approved under this section shall promptly relocate or
13 adjust the pipeline within the road or road right-of-way at no cost to the
14 county or township. Such relocation or adjustment shall be completed as
15 soon as reasonably possible within the time set forth in any request by the
16 county or township for such relocation or adjustment. Any damages
17 suffered by the county, township, or its contractors as a result of such
18 pipeline owner's failure to timely relocate or adjust its facilities shall be
19 paid by such owner.

20 (h) **If a board of county commissioners vacates a road pursuant to**
21 **K.S.A. 68-102, and amendments thereto, an owner of a pipeline**
22 **approved under this section shall remove the pipeline within a**
23 **reasonable amount of time as determined by the board of county**
24 **commissioners unless written permission is obtained from all persons**
25 **acquiring the property interest of the county after the road has been**
26 **so vacated. If removal is required under this subsection, the owner of**
27 **such pipeline shall return the property to its functional equivalence**
28 **before the removal, and, if such owner fails to make the repairs, the**
29 **persons acquiring the property interest of the county shall have a**
30 **cause of action against the pipeline owner for such violation of this**
31 **subsection and may recover damages, including reasonable attorney**
32 **fees, if the pipeline owner is found liable by a court of competent**
33 **jurisdiction.**

34 (i) **If the owner of a pipeline permitted under this act transfers**
35 **any portion of such pipeline, such owner shall notify the county clerk**
36 **of such transfer.**

37 (j) **Any pipeline permitted under this act and installed on or after**
38 **the effective date of this act shall be a locatable facility as defined in**
39 **K.S.A. 66-1802(g), and amendments thereto.**

40 ~~(k)~~ (k) For the purposes of this section, "agricultural activity" means
41 the same as in K.S.A. 2-3203, and amendments thereto.

42 ~~(j)~~ (l) Nothing in this act shall supplant any local, state or federal
43 law regulating the transportation of any substance.

1 Sec. 2. This act shall take effect and be in force from and after its
2 publication in the statute book.