

REVISED
SESSION OF 2022

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2531

As Further Amended by House Committee on
Agriculture

Brief*

HB 2531, as further amended, would allow, upon approval by a board of county commissioners (commissioners) or board of township trustees (trustees), any person engaged in an agricultural activity to construct, maintain, and operate pipelines in pursuit of an agricultural activity along, upon, under, and across the right-of-way of any county or township road, as defined in law and in conformity with laws and regulations of the state and county in which the pipeline is located.

[*Note:* “Agricultural activity” is defined in KSA 2-3203 as the growing or raising of horticultural and agricultural crops, hay, poultry, and livestock, and livestock, poultry, and dairy products for commercial purposes and includes activities related to the handling, storage, and transportation of agricultural commodities.]

Permitted Use of Right-of-way

The bill would allow all pipelines used in an agricultural activity that are installed in the road right-of-way prior to the effective date of the bill (July 1, 2022) to be considered authorized by the commissioners or trustees and would be ratified as permitted uses of the right-of-way. The bill would create an exception for pipelines installed in violation of an

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

express prohibition by commissioners or trustees at the time of the pipeline's installation.

Board of County Commissioners or Board of Township Trustees

Requirements for Commissioners and Trustees

The bill would require commissioners in a county that has adopted a county road unit system pursuant to state law to accept applications, approve or deny those applications, and oversee any approved agricultural activity pipeline.

In a county where a country road unit system has not been adopted, the appropriate trustees would be required to accept applications, approve or deny those applications, and oversee any approved agricultural activity pipeline.

Application Process

The bill would allow any person engaged in an agricultural activity to request the commissioners or trustees to approve a pipeline by submitting a written application to the county clerk. The application would be required to include the location, design, and specifications of the pipeline. The bill would require the person who makes the request and submits the application to be the owner of the pipeline upon approval of the pipeline.

The bill would require the application to provide the location of all locatable underground facilities in the area of the work and in the vicinity of the excavation. The bill would also require the governing body to notify each owner of the underground facilities and the owner of any land located within a quarter of a mile of the excavation.

Consideration of Applications

The bill would provide that any application to use or occupy a specific portion of a road right-of-way would not be denied or approved with conditions without reasonable notice and an opportunity for a public hearing before the commissioners or trustees.

The commissioners or trustees would be required to approve or deny the application by resolution within 90 days of receipt by the county clerk. The bill would deem the application approved if the commissioners or trustees take no action within 90 days.

The bill would allow any approval or denial to be appealed pursuant to law that allows commissioners or trustees decisions to be appealed to the district court.

Decision Requirements

The bill would prescribe that any decisions made by the commissioners or trustees would be:

- Limited to whether the pipeline interferes with public travel upon the road, the management of conflicting uses of the road right-of-way, or the ability of the county or township to maintain the road or right-of-way; and
- Reasonable and not arbitrary, capricious, or discriminatory.

Requirements for Pipeline Owners

The bill would require a pipeline owner to maintain the pipeline at the owner's expense. The owner would be required to provide notice to the county of any maintenance activity that may require the temporary closing of a road or obstruction of traffic.

The bill would provide the commissioners or trustees with the discretion to require the pipeline owner to:

- Repair all road or right-of-way damage caused by the owner, or any agent, affiliate, employee, or subcontractor of the owner, while occupying, installing, repairing, or maintaining the pipeline;
- Return the road and right-of-way to its functional equivalence before the damage pursuant to the reasonable requirements and specifications of the county or township; or
- Provide bond or liability insurance to cover costs of pipeline removal should pipeline ownership be abandoned or if the owner should become deceased.

Failure to Repair

The bill would authorize the county or township to make the repairs to the road and right-of-way and charge the pipeline owner for the repairs, if the owner fails to make the required repairs.

The bill would also authorize the county or township, upon incurring damages as a result of a violation of the bill's provisions, to have a cause of action against the pipeline owner for the violation and would allow the county or township to recover damages, including reasonable attorney fees, if the owner is found liable by a court.

Relocation

The bill would require, upon request of the commissioners or trustees, a pipeline owner to promptly relocate or adjust the pipeline within the road or right-of-way at no cost, in order to accomplish construction and

maintenance activities directly related to improvements to the road or right-of-way.

The relocation or adjustment would be required to be completed as soon as reasonably possible within the time set forth in the request by the county or township. The bill would require the owner to pay for any damages suffered by the county, township, or its contractors as a result of the pipeline owner's failure to timely relocate or adjust its facilities.

Vacated Road

The bill would require, upon the commissioners vacating a road pursuant to state law, the pipeline owner to remove the pipeline within a reasonable amount of time, as determined by the commissioners, unless written permission is obtained from all persons acquiring the property interest of the county after the road has been vacated.

The bill would require, if removal is required, the pipeline owner to return the property to its functional equivalence before the removal. If the owner fails to make the repairs, the persons acquiring the property interest would have a cause of action against the pipeline owner and could recover damages, including reasonable attorney fees, if the owner is found liable in a court of competent jurisdiction.

Transfer of Pipeline

The bill would require, upon transfer of any portion of a pipeline, the pipeline owner to notify the county clerk of the transfer.

Locatable Facility

The bill would require any pipeline permitted under this act and installed on or after the effective date of the bill to be a locatable facility, as defined in law.

Transportation Laws

The bill would state that nothing in this act would supplant any local, state, or federal laws regulating the transportation of any substance.

Background

The bill was introduced by the House Committee on Agriculture at the request of a representative of the Kansas Livestock Association.

House Committee on Agriculture

[*Note:* The proponents and opponents both discussed during their testimonies a court case in Phillips County that was decided in favor of a landowner upon whose property a pipeline for a nearby hog facility had been placed, without permission from the landowner, in the road right-of-way bordering the landowners' property. The court order stated it was disputed by both parties whether the board of county commissioners had given implied consent for the pipeline to be installed.]

In the House Committee hearing on February 14, 2022, **proponent** testimony was provided by a representative of landowners in Phillips County, two private citizens, a County Commissioner of Phillips County, an attorney representing landowner clients, and a representative of the Kansas Livestock Association. The proponents expressed concerns about the ramifications of the lawsuit going forward, potentially blocking the ability of agricultural businesses from placing agricultural use pipelines in the road right-of-way, as has been common practice.

Written-only proponent testimony was provided by representatives of the Kansas Farm Bureau and Kansas Pork Association.

Opponent testimony was provided by two private citizens, an attorney representing landowner clients, and a representative of the Kansas Sierra Club. The opponents stated the bill violates basic property law rights and seeks to treat agricultural use pipeline owners like public utilities without any benefit to the public.

Written-only opponent testimony was provided by the County Engineer for Butler County, a Kansas Association of Counties (KAC) local road engineer, and a representative of the Kansas Legislative Policy Group.

Neutral testimony was provided by the Chief Engineer, Utilities Division, Kansas Corporation Commission, and a representative of KAC. Written-only neutral testimony was provided by a representative of Kansas Electric Cooperatives, Inc., and the Riley County Director of Public Works.

On February 21, 2022, the House Committee amended the bill to:

- Require applications to provide information regarding the location of locatable underground facilities in the area of the work and in the vicinity of the excavation;
- Require the governing body to notify each owner of underground facilities and landowners of the application;
- Add “the management of conflicting uses of the road right-of-way” to the considerations a board may use to make a decision on an application;
- Require a pipeline owner to provide notice to the county of any maintenance activity that may require the temporary closing of a road or obstruction of traffic; and

- Require any permitted pipeline installed after the effective date of the bill to be a locatable facility.

On February 23, 2022, the bill was withdrawn from the House Calendar and referred to the House Committee on Appropriations. On March 1, 2022, the bill was re-referred to the House Committee on Agriculture.

On March 2, 2022, the House Committee further amended the bill to:

- Add references to “board of township trustees”;
- Require commissioners in a county that has adopted a county road unit system to accept applications, approve or deny applications, and oversee approved pipelines;
- Require trustees in a county that has not adopted a county road unit system to accept applications, approve or deny applications, and oversee approved pipelines;
- Require the person who makes an application to the commissioners or trustees to be the same person who owns the pipeline;
- Authorize commissioners and trustees to require the owner of a pipeline to provide bond or liability insurance to cover costs of pipeline removal should pipeline ownership be abandoned or if the owner becomes deceased;
- Provide for the process of removal of pipelines if the commissioners or trustees vacate a road and allowance for lawsuits;
- Require notification if ownership of a pipeline is transferred; and
- Make technical amendments.

Fiscal Information

The fiscal note prepared by the Division of the Budget on the bill, as introduced, states the KAC states enactment of the bill would increase administrative oversight costs for the application process and appeal hearings. According to the KAC, the bill would put counties at risk of paying for road damages or lawsuits if an applicant damages a road and is unable or unwilling to pay for repairs.

Local government; right-of-way; counties; townships; pipelines; agricultural activities