



Since 1894

To: House Committee on Agriculture
Rep. Ken Rahjes, Chair

From: Aaron M. Popelka, V.P. of Legal & Governmental Affairs, Kansas Livestock Association

Re: **HB 2531 AN ACT concerning counties and townships; relating to rights-of-way; authorizing certain persons to use the right-of-way of any county road or township road to install, maintain and operate a pipeline for agricultural activities.**

Date: February 14, 2022

The Kansas Livestock Association (KLA), formed in 1894, is a trade association representing over 5,700 members on legislative and regulatory issues. KLA members are involved in many aspects of the livestock industry, including seed stock, cow-calf, and stocker cattle production; cattle feeding; dairy production; swine production; grazing land management; and diversified farming operations.

Thank you, Chairman Rahjes and members of the Committee, for the opportunity to testify. KLA appears today as a proponent of HB 2531.

Before getting into the particulars of the bill, it is important to understand that agricultural operations today can request permission from a board of county commissioners to lay and operate a pipeline in a county or township road right of way. KLA is aware of a number of livestock operations that have existing pipelines in the road right of way that transport both fresh water from distance wells to a livestock facility and wastewater from a livestock facility to fields for application as fertilizer.

The reason we are here today is because two neighbors got in a dispute and a district court judge issued an opinion we believe is in error. In that case, the judge allowed a trespass claim, against the owner of an agricultural pipeline placed in a road right of way, by a landowner adjacent to the road. While there was evidence the county commission did not object to the pipeline, the judge said the legislature did not specifically authorize agricultural pipelines as a use of the right of way. While the district court judge's opinion only applies to the litigants in that case, KLA is concerned that this dispute could cause disruption to other operations across the state.

The legislature authorized counties to lay out roads in K.S.A. 68-102. This statute speaks of the road as a public utility and does not confine its use to automobiles. In addition, under K.S.A. 68-106, the county must pay damages to any landowner for the area used as a road right of way. Electric, telecommunication, other utilities have the ability to use the road right of way without triggering a trespass claim.

To ensure the district court judge's opinion does not grow beyond the litigants, HB 2531 was drafted to clearly indicate the legislature's intent to authorize the road right of way for use by agricultural pipelines when approved by the board of county commissioners. According to the district judge's opinion, such a statute would allow these projects to exist without incurring liability for trespass.

In addition to authorizing such pipelines, HB 2531 is careful to place control over the road right of way with the board of county commissioners. Under the bill, an agricultural pipeline cannot proceed without the permission of the board of county commissioners. It also includes an application process that requires disclosure of the location, design, and specifications of the proposed pipeline. In addition, the bill places responsibility for constructing and operating the pipeline on the pipeline owner. If damage is done to the right of way, a county or township can demand repairs be completed by the owner. If the repair is not done after such a request, the county or township can fix the damage and bill the pipeline owner for the costs. If the owner does not pay the damages, it gives the county or township a cause of action in court. This portion of the bill is modeled on K.S.A 17-1902 that applies to telecommunication providers with infrastructure in the public right of ways.

Thank you for the opportunity to submit testimony. KLA asks that the Committee support HB 2531 and recommend it favorable for passage.