

Testimony before the House Agriculture Committee
HB 2531 – County road ROW authority
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In-person testimony in support

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Mr. Chairman & members of the House Agriculture Committee:

Thank you for the opportunity to appear in support of HB 2531. I sought introduction of this legislation on behalf of a group of landowners concerned about an ambiguity in the law relating to a County’s power to grant right-of-way easements for the placement of pipes to assist agricultural producers in moving water and liquid nutrients from field to field.

For decades landowners have sought and obtained permission from their local county commissioners to place pipelines in the county road ROW’s. Both the landowners and counties have assumed this authority exists as an inherent part of the counties’ permanent ROW easements in existence from the time the county roads were first placed. However, a recent decision by a district court judge out west has called that assumption into question. The judge reasoned that if there is not a specific enabling statute in place giving the counties the right to approve such pipeline easements, the authority does not exist and pipe placement may constitute trespass.

To the extent the court was technically correct, HB 2531 would provide the necessary enabling legislation to grant the counties the authority everyone has assumed they already had. Importantly, the bill would also make it clear that the many miles of pipes already in place are deemed approved to avoid additional litigation and the potential that pipes would need to be unearthed.

Going forward, the bill would create a process for application and county approval, making sure that the county is well protected and ensuring that the landowners comply with all applicable state and county rules and regulations. Included in that would be the requirement for ensuring compliance with locating any underground utilities.

I see in the fiscal note a concern by the Kansas Association of Counties that the bill might put the counties at risk of paying for road damages if an applicant is unwilling or unable to pay for repairs. This stated concern is pretty disappointing, given the fact that these producers are spending hundreds of thousands, even millions of dollars on their operations, all to the benefit of the counties in which they operate. We suggest this perceived concern is wholly unfounded. The bill’s

language provides ample protection for the counties. We are not aware of a single instance in the past where this has been an issue.