

Approved: 2-18-93

Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairman, Representative Michael R. O' Neal at 3:30 p.m. on February 11, 1993 in room 313-S of the Statehouse.

All members were present except:

Representative Tom Bradley - Excused
Representative Clyde Graeber - Excused

Committee staff present:

Jerry Donaldson, Legislative Research
Jill Wolters, Revisor of Statutes
Cindy Wulfkuhle, Committee Secretary

Conferees appearing before the Committee:

Glenn Smith, Chief, Natural Gas Operations and Rates
Eva Powers, MCI Telecommunications Corporation
Jim Ludwig, Western Resources
Larissa Johns, Director, Customer & Support Service, Kansas Public Service
Mike Reece, Director of State Government Affairs, AT&T
Bob Totten, Public Affairs Director, Kansas Contractors Association
Dawn Nonhof, One Call System
Louis Stroup, Director, Kansas Municipal Utilities
Rob Hodges, President, Kansas Telecommunications Association
Steve Area, Southwestern Bell Telephone Company
Hugh Taylor, Manager, Board of Public Utilities
William Pauzaskie, Kansas Trial Lawyers Association
Ed Schaub, Western Resources
Whitney Damron, Kansas City Power & Light Company
Ralph Skoog, Kansas Cable
Anne Smith, Kansas Association of Counties

Representative Carmody appeared before the committee with two bill requests. The first would provide that personal injury awards would be exempt under the bankruptcy law.

Representative Carmody made a motion to introduce this as a committee bill. Representative Mays seconded the motion. The motion carried.

The second request deals with the Victim's Rights Amendment that was adopted last year. This request would amend K.S.A. 74-7333 to clarify that the definition of crime would not include violations of local ordinances.

Representative Carmody made a motion to introduce this as a committee bill. Representative Macy seconded the motion. The motion carried.

Hearings on HB 2041 were opened dealing with the Kansas Underground Utility Damage Prevention Act.

Glenn Smith, Chief, Natural Gas Operations and Rates, Kansas Corporation Commission, appeared before the committee as a proponent of the bill. They also requested an amendment to the bill that would strike on page 2, lines 30 to 32, and replacing the language with "Tolerance zone" means the area within 24 inches of the outside dimensions in all horizontal directions of an underground facility. (Attachment #1)

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

Minutes of the House Committee on Judiciary, Room 313-S, Statehouse, at 3:30 p.m. on February 11, 1993.

Eva Powers, MCI Telecommunications Corporation, appeared before the committee as a proponent of the bill. MCI requested an amendment to the bill that only one notification center be established. They also recommended a 24 inch horizontal tolerance zone to ensure an adequate safety margin. (Attachment #2)

Jim Ludwig, Western Resources, appeared before the committee as a proponent of the bill. They also requested that the horizontal tolerance zone be expanded from 12 to 24 inches. Another amendment request would strike the seven day period operators are responsible for maintaining tolerance zone identifiers in Section 6(b) on page 3, lines 33 to 36. (Attachment #3)

Larissa Johns, Director, Customer & Support Service, Kansas Public Service, appeared before the committee in support of the bill. She stated that their primary concern is safety. (Attachment #4)

Mike Reece, Director of State Government Affairs, AT&T, appeared before the committee as a proponent of the bill. They support the concept of the mandatory "One Call" legislation. They also concur with the amendment changing the horizontal tolerance zone from 12 to 24 inches. (Attachment #5)

Bob Totten, Public Affairs Director, Kansas Contractors Association, appeared before the committee as a proponent of the bill. They requested two amendments to the bill. The first would change the notice from "at least 3 days and not more than 10" to "at least 2 days and a maximum of 10". The second would provide for a single "One Call System" center. (Attachment #6)

Dawn Nonhof, One Call System, Inc., a non-profit organization, appeared before the committee as a proponent of the bill. They believe that this bill does an important thing...it saves peoples lives. One Call recommends that the bill provide for a single center. They would also like to see mandatory membership. (Attachment #7)

Louis Stroup, Director, Kansas Municipal Utilities, appeared before the committee in support of the One Call System but could not support HB 2041 without the amendments they requested. The first is changing the horizontal tolerance zone from 12 to 24 inches and the second is a single One Call System. (Attachment #8)

Rob Hodges, President, Kansas Telecommunications Association, appeared before the committee as a proponent of the bill. They also support changing the horizontal tolerance zone from 12 to 24 inches. (Attachment #9)

Steve Area, Southwestern Bell Telephone Company, appeared in support of the bill. They believe that HB 2041 will help ensure the safety of the public by requiring excavators to call before they dig. (Attachment #10)

Hugh Taylor, Manager, Board of Public Utilities, appeared before the committee in support of the bill. They also support changing the horizontal tolerance zone from 12 to 24 inches and the placement of markers at least 3 day ahead of planned excavation instead of 7 days. They believe that the One Call System should be voluntary and therefore request that Section 11 be eliminated. He quoted figures as to how much he estimates his company would have to spend to comply with mandatory membership in the system. (Attachment #11)

William Pauzauskie, Kansas Trial Lawyers Association, appeared before the committee as an opponent to several sections of the bill. They would like to see some of the provisions in the Overhead Power Line Safety Act in this bill. (Attachment #12)

Janet Stubbs, Home Builders Association of Kansas, appeared before the committee as an opponent to portions of the bill. They support mandatory membership and want 12 inch horizontal tolerance zone. They also have concerns about the notice requirement. (Attachment #13)

CONTINUATION SHEET

Minutes of the House Committee on Judiciary, Room 313-S, Statehouse, at 3:30 p.m. on February 11, 1993.

The following conferees did not personally appear before the committee. They are opponents to the bill and requested that their testimony be included in the minutes: Ronald Goold, Chief Engineer, Water District No. 1, Johnson County; Rawlins County Commissioners; Cheyenne County Commissioners; Thomas County Commissioners. (Attachment #14)

Hearings on HB 2041 were closed.

Hearings on HB 2410 were opened enacting the Overhead Power Line Accident Prevention Act.

Ed Schaub, Western Resources, appeared before the committee in support of the bill. He gave a brief summary of what the bill proposes. The committee was reminded that the need for the bill was the technical defect that occurred when the bill was originally signed into law by the Governor. (Attachment #15)

Louis Stroup, Director, Kansas Municipal Utilities, appeared before the committee in support of the bill.

Whitney Damron, Kansas City Power & Light Company, appeared before the committee as a proponent of the bill. They also requested two amendments in Section 4(b) on page two of the bill. The first would add that public utilities not be required to provide temporary clearances or safety until payment of the cost has been made. The second would be to change "three" to "seven" in line 31 and delete "...such notification....of section 4" and replace the language with "payment has been made." (Attachment #16)

Ralph Skoog, Kansas Cable, appeared before the committee in support of the bill.

Anne Smith, Kansas Association of Counties, appeared before the committee neither as a proponent nor opponent to the bill. The Association of Counties has some concern with several sections of the bill, including, primarily, the requirement of taxing unit having to pay to relocate lines. (Attachment #17)

William Pauzauskie, Kansas Trial Lawyers Association, did not appear before the committee. He is an opponent to the bill and requested that his testimony be included in the minutes. (Attachment #18)

Hearings on HB 2410 were closed.

Representative Wells made a motion to approve the Committee minutes from February 1, 2, 3, & 4. Representative Mays seconded the motion. The motion carried.

The Committee adjourned at 5:15 p.m. The next Committee meeting is February 15, 1993 at 3:30 p.m. in room 313-S.

GUEST LIST

HOUSE JUDICIARY COMMITTEE

DATE February 11

NAME	ADDRESS	ORGANIZATION
DENNY S. KOCH	220 E 6TH	SW BEL
Ken Peterson	1065 merchantstone	KS Petroleum Council
Jim Allen	Topeka	EKC/GA
Jeff Southard	Topeka	Western Resources
ED SCHAUB	"	" "
Carl Daugherty	Columbus	Empire Distric Elec
JEANETTE HATHAWAY	Topeka	KSLS
JOHN C. BOTTENBERG	TOPEKA	Western Resources
BRUCE GRAHAM	Topeka	KEPC
TOM DAY	TOPEKA	KCC
DAWN NORTON	8100 E. 22ND ST, #2100 WICHITA, KS	Kansas One-Call
RALPH SKOOG	TOPEKA	KS CATV ASSN
Carla Dugger	KC	ACLU
Danella H. Neely	Das Moines, Iowa	Northern National Water Co.
Jean Barbic	Topeka	Barbic & Associates
Janet Stukker	"	WBAK & KLICA
Charles R. Pharesian	Frankfort, KS	KLICA
Don Ford	Axtell, KS	Charles Const.
Elmer Beckers	Baldwin, KS	KLICA
Dave Newton	Overland Park, KS	KLICA
Hugh Taylor	700 Minnesota Board Public Util.	KCC, KC
Louie Stroup Jr.	KAS. Municipal Utilities	WCPHerson

STEVE AREA

Jim Lunnis

TOPEKA

"

SW BELL

WESTERN RESOURCES

Whitney Dameron

STEVE KEARNEY

Michelle Lester

MIKE REECHT

Topeka

"

"

TOPEKA

Peter McMillan Associates /
KCP&L

COASTAL

Ks. Gov. Consulting
AT&T

Rob Hodges

JEFF RUSSELL

Harry Herington

Anne Smith

Paul Shelby

BOB TOTTEN

Topeka

TOPEKA

Ks Telecom Assn.

UNITED Telephone Co.

Topeka

League of Ks Municipalities

Topeka

Ks. Assoc of Counties

Topeka

OIA

Topeka

Ks. Contractors Assn.

House Committee on Judiciary

February 11, 1993

Testimony of

Glenn D. Smith
Chief, Natural Gas Operations and Rates
Kansas Corporation Commission

The Kansas Corporation Commission (KCC) appreciates the opportunity to testify before the Judiciary Committee in support of HB 2041.

Preventing damage to underground facilities is the subject of considerable legislation. Currently about 40 states have mandatory one call legislation, with Missouri being the most recent addition. The primary impetus for this legislation are "incidents" caused by "third party" hits on pipelines transporting natural gas or natural gas liquids, such as propane or butane. Annually, due to third party hits there are more than 100 incidents. An incident is the unplanned escape of gas that results in death or hospitalization of an individual, or that results in property damage of more than \$50,000. In the two most recent years for which national statistics are available there were 22 deaths, 105 persons injured, and approximately \$29 million of property damage. As depressing as those figures are they represent a significant improvement over the late 1970's, prior to the initiation of mandatory damage prevention systems. The years 1975-79 averaged 1100 incidents and 36 deaths annually.

The reduction in losses in states with mandatory systems, in response to federal requirements, has been in excess of 70%.

Kansas has experienced some reduction due to the voluntary system

operated here, but there remain some operators of underground facilities that have not joined, and too frequently there are excavators that do not utilize the location service prior to excavation. To date there have been no fatalities to report in Kansas, but relying on luck for public safety has proven risky elsewhere.

Federal regulations (Title 49 Part 198) mandate that States implement a mandatory damage prevention (one call) program by the end of CY 1993, or risk losing a portion of the pipeline safety program grant funds in CY 1994. The components of HB 2041 satisfy the federal requirements. Kansas is complying with the federal requirements in other parts of the pipeline safety regulations.

The provisions of HB 2041 may be summarized as requiring the following:

1. Establishment of a notification center.
2. Operators of underground facilities to become members of notification center.
3. Excavators to provide 3 day notice of intent to excavate.
4. Operators to locate and mark noticed area prior to planned excavation.
5. Notice of emergency excavation to be given as soon as possible.

Additionally HB 2041 provides that:

1. Rebuttable presumption exists that excavator was negligent for failing to give or abide by notice.
2. Rebuttable presumption does not apply if operator fails

to participate in notification center.

3. Excavator not responsible for damage if operator fails to properly mark location.
4. Civil penalties and injunctive relief are provided.
5. Enforcement by KCC.

The Bill, as written by the Revisor's Office, is not as the Corporation Commission introduced it to the House Energy and Natural Resources Committee. The Revisor's Office picked up amendatory language from SB 678 as it was amended by the Senate during the 1992 Legislature. On advice from the Revisor, they recommended a balloon correction to remedy the problem. The correction being made deals with the definition of the tolerance zone.

I have attached a technical correction to remedy a typographical mistake that crept in during preparation.

Finally, It is hoped that this damage prevention program will receive positive endorsement from this committee, and the house, so that this program can be fully implemented and thereby avoid future injuries and accidents. May we move forward by learning from the hard lessons of our neighbor.

HOUSE BILL No. 2041

By Committee on Energy and Natural Resources

1-14

8 AN ACT enacting the Kansas underground utility damage prevention
9 act; concerning prevention of damage to certain underground util-
10 ity facilities.

11
12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. This act shall be known and may be cited as the
14 Kansas underground utility damage prevention act.

15 Sec. 2. As used in this act:

16 (a) "Damage" means any impact or contact with an underground
17 facility, its appurtenances or its protective coating, or any weakening
18 of the support for the facility or protective housing which requires
19 repair.

20 (b) "Emergency" means any condition constituting a clear and
21 present danger to life, health or property, or a customer service
22 outage.

23 (c) "Excavation" means any operation in which earth, rock or
24 other material on or below the ground is moved or otherwise dis-
25 placed by any means, except tilling the soil, or railroad or road and
26 ditch maintenance that does not change the existing railroad grade,
27 road grade and/or ditch flowline, or operations related to exploration
28 and drilling of crude oil or natural gas, or both.

29 (d) "Excavator" means any person who engages directly in ex-
30 cavation activities within the state of Kansas.

31 (e) "Facility" means any underground line, system or structure
32 used for producing, gathering, storing, conveying, transmitting or
33 distributing gas, electricity, communication, petroleum, petroleum
34 products or hazardous liquids.

35 (f) "Marking" means the use of stakes, paint or other clearly
36 identifiable materials to show the field location of underground fa-
37 cilities, in accordance with the resolution adopted August, 1984, by
38 the utility location coordination council of the American public work
39 association.

40 (g) "Notification center" means a center operated by an organi-
41 zation which has a minimum of five underground operators partic-
42 ipating and has as one of its purposes to receive notification of
43 planned excavation in a specified area from excavators and to dis-

seminate such notification of planned excavation to operators who are members and participants.

(h) "Operator" means any person who owns or operates an underground facility, except for any person who is the owner of real property wherein is located underground facilities for the purpose of furnishing services or materials only to such person or occupants of such property.

(i) "Preengineered project" means a public project or a project which is approved by a public agency wherein the public agency responsible for the project, as part of its engineering and contract procedures, holds a meeting prior to the commencement of any construction work on such project in which all persons, determined by the public agency to have underground facilities located within the construction area of the project, are invited to attend and given an opportunity to verify or inform the public agency of the location of their underground facilities, if any, within the construction area and where the location of all known and underground facilities are duly located or noted on the engineering drawing as specifications for the project.

(j) "Permitted project" means a project where a permit for the work to be performed must be issued by a state or federal agency and, as a prerequisite to receiving such permit, the applicant must locate all underground facilities in the area of the work and in the vicinity of the excavation and notify each owner of such underground facilities.

(k) "Person" means any individual, partnership, corporation, association, franchise holder, state, city, county or any governmental subdivision or instrumentality of a state and its employees, agents or legal representatives.

~~(l) "Tolerance zone" means the area within 12 inches of the outside dimensions in all horizontal directions and 24 inches in vertical direction of an underground facility.~~

(m) "Working day" means every day, except Saturday, Sunday or a legally proclaimed local, state or federal holiday.

Sec. 3. An excavator shall not engage in excavation near the location of any underground facility without first having ascertained, in the manner prescribed in this act, a location of all underground facilities in the proposed area of the excavation.

Sec. 4. (a) An excavator shall serve notice of intent of excavation least three full working days, but not more than 10 working days before commencing the excavation activity, on each operator having underground facilities located in the proposed area of excavation.

(b) The notice of intent of excavation shall contain the name

(l) "Tolerance zone" means the area within 24 inches of the outside dimensions in all horizontal directions of an underground facility.

address and telephone number of the person filing the notice of intent, the name of the excavator, the date the excavation activity is to commence and the type of excavation being planned. The notice shall also contain the specific location of the excavation if it is to take place within the boundaries of a city or the specific quarter sections if outside the boundaries of any city.

(c) The provisions of this section shall not apply to a preengineered project or a permitted project, except that the excavators shall be required to give notification in accordance with this section prior to starting such project.

Sec. 5. (a) This act recognizes the value of and encourages and authorizes the establishment of notification centers. Each operator who has an underground facility shall become a member of a notification center.

(b) Upon the establishment of a notification center in compliance with this act, notification, as required by section 4, to operators who are members of the notification center shall be given by notifying the notification center by telephone at the toll free number. The content of such notification shall be as required by section 4.

(c) Each operator who has an underground facility within the defined geographical boundary of a notification center shall be afforded the opportunity to become a member of the notification center on the same terms as the original members.

(d) A suitable record shall be maintained by notification centers to document the receipt of notices from excavators as required by this act.

Sec. 6. (a) An operator served with notice shall, in advance of the proposed excavation, unless otherwise agreed between the parties, inform the excavator of the tolerance zone of the underground facilities of the operator in the area of the planned excavation by marking, flagging or other acceptable method no sooner than two working days prior to planned excavation.

(b) An operator is responsible for maintaining the identification of the tolerance zone by marking, flags, or other locating identifiers for seven working days. An excavator is required to serve notice of excavation after that time if location is required.

(c) If the operator notifies the excavator that it has no underground facilities in the area of the planned excavation, fails to respond or improperly marks the tolerance zone for the facilities, the excavator may proceed and shall not be liable for any direct or indirect damages resulting from contact with the operator's facilities, except that nothing in this act shall be construed to hold any excavator harmless from liability in those cases of gross negligence or willful

1 and wanton conduct.

2 Sec. 7. In the case of an emergency which involves danger to
3 life, health or property or which requires immediate correction in
4 order to continue the operation of an industrial plant or to assure
5 the continuity of public utility service, excavation, maintenance or
6 repairs may be made without using explosives, if notice and advice
7 thereof, whether in writing or otherwise are given to the operator
8 or notification center as soon as reasonably possible.

9 Sec. 8. This act shall not be construed to authorize, affect or
10 impair local ordinances, resolutions or other provisions of law con-
11 cerning excavating or tunneling in a public street or highway or
12 private or public easement.

13 Sec. 9. Upon receiving information as provided in section 6, an
14 excavator shall exercise such reasonable care as may be necessary
15 for the protection of any underground facility in and near the con-
16 struction area when working in close proximity to any such under-
17 ground facility.

18 Sec. 10. When any contact with or damage to any underground
19 facility occurs, the operator shall be informed immediately by the
20 excavator. Upon receiving such notice, the operator shall immedi-
21 ately dispatch personnel to the location to provide necessary tem-
22 porary or permanent repair of the damage. If a serious electrical
23 short is occurring or dangerous gases or fluids are escaping from a
24 broken line, the excavator shall immediately inform emergency
25 personnel.

26 Sec. 11. (a) In a civil action in a court of this state when it is
27 shown by competent evidence that damage to the underground fa-
28 cilities of an operator resulted from excavation activities and that the
excavator responsible for giving notice of intent to excavate failed to
30 give such notice, or excavation occurred outside the notice and
31 marked area, there shall be a rebuttable presumption that the ex-
32 cavator was negligent for failing to give such notice or abide by the
33 notice given.

34 (b) The provisions of subsection (a) shall not apply if the operator
35 whose underground facilities are damaged fails to participate in a
36 notification center.

37 (c) In no event shall the excavator be responsible for any damage
38 to underground facilities if such damage was caused by the failure
39 of the operator to correctly and properly mark the location of the
40 tolerance zone of the damaged facility.

41 Sec. 12. Any person to whom this act applies, who violates any
42 the provisions contained in this act, shall be subject to civil
43 penalties and injunctive relief as set out in K.S.A. 66-1,151, and

1 amendments thereto.

2 Sec. 13. This act shall be administered and enforced by the state
3 corporation commission of the state of Kansas.

4 Sec. 14. If any provision of this act or the application thereof to
5 any person or circumstance is held invalid, the remainder of the act
6 and the application of such provision to other persons or circum-
7 stances shall not be affected thereby.

8 Sec. 15. This act shall take effect and be in force from and after
9 its publication in the statute book.



BEFORE THE HOUSE JUDICIARY COMMITTEE
February 11, 1993

RE: House Bill No. 2041, The Kansas Underground
Utility Damage Prevention Act

I am Eva Powers appearing for MCI Telecommunications Corporation. MCI's Governmental Affairs Regional Manager, Leann Chilton, regrets that she is unable to appear today.

MCI has supported Call Before You Dig proposals in all jurisdictions where this issue has been introduced and is pleased to have this opportunity to express its support for House Bill 2041.

MCI has a large investment in underground facilities. It therefore has a great interest in all measures that minimize the chance that these facilities are cut and the service disruptions which may result from a cut. MCI has an equal interest in ensuring that when it as an excavator places facilities, it does not cut the facilities of other utilities.

House Bill 2041 proposes the establishment of notification centers. MCI recommends that only one notification center serving the entire state be established. This center should be available 24 hours a day, 7 days a week, and should be reachable by one toll free 800 number in order to best achieve the goal of this proposed legislation.

MCI believes it is in the public interest to require all operators with underground facilities to be members of the center in order to protect the public from service disruptions and potential hazards which may result especially from cutting of oil and gas facilities.

Sec. 2(1) establishes a tolerance zone of 12 inches in all horizontal directions. MCI recommends a 24 inch horizontal tolerance zone to ensure an adequate safety margin.

The potential for damage to underground facilities is very real, as is the potential liability arising from such damage. The enactment of Call Before You Dig legislation decreases the risk of damage and liability. MCI urges this committee to consider its suggested amendments and to recommend the bill favorably. MCI would be pleased to work with the committee and any parties who may have concerns regarding this bill so that a sensible statute, fair to both excavators and operators may be enacted.

Thank you for your time and attention.

HOUSE JUDICIARY
Attachment #2
02-11-93

**TESTIMONY BEFORE THE
HOUSE JUDICIARY COMMITTEE**

by

**Jim Ludwig
Western Resources**

February 11, 1993

Chairman O'Neal and members of the Committee:

We support the efforts of the Kansas Corporation Commission to enact HB 2041. A mandatory excavation notification (One-Call) law will reduce third party damage to our natural gas lines and underground electric lines. It will also enhance public safety. Many of you already know that we have supported similar legislation since at least 1985.

We agree with the Commission that the horizontal tolerance zone [cf. Sec. 2(l)] should be expanded from 12 to 24 inches. Twelve inches is too narrow a tolerance zone, given the way we bury the newer plastic pipe. This plastic pipe comes from its manufacturers in coils and is best installed by uncoiling it into a trench in a slightly wavy or serpentine fashion. Drawing such piping taut reduces its ability to adjust to subsoil shifting. A 12 inch tolerance zone for plastic pipe would have to be a wavy line - and that would tax the skills of the most experienced back-hoe operator. Twenty-four inches is a broad enough tolerance for us to draw a straight line for excavators.

We also request an amendment to Section 6(b) on page 3, lines 33-36. We would strike the seven day period operators are responsible for maintaining tolerance zone identifiers and make excavators responsible for the identifiers once operators have marked them. Excavators know when they will begin excavation; operators do not. Western Resources received some 175,000 locate requests in 1992. Our operating personnel estimate that re-checking tolerance zone identification each day for up to seven working days could cost as much as \$2.8 million a year. We acknowledge, however, that excavators will have difficulties if they arrive at their digging site and markings have been altered or removed. If an excavator notifies One-Call that markings have been removed or altered, we have added a provision to the section that requires operators to re-identify the tolerance zone within a working day. We will normally re-identify markers that same day, unless we are notified near the close of the business day. Our amendment is attached.

We support HB 2041, and ask the committee to adopt our amendment and the Commission's and recommend HB 2041 favorably for passage.

2-11-93

AMENDMENT TO KANSAS H.B. 2041

Amend sec. 6(b) as follows:

An operator is responsible for ~~maintaining the identification of~~ identifying the tolerance zone by marking, flags or other locating identifiers, ~~for seven working days.~~ and the excavator is responsible for maintaining the identifiers. Following the initial identification of the tolerance zone by the operator, if the excavator notifies the notification center that the identifiers have been improperly removed or altered, the operator shall make every reasonable effort to re-identify the tolerance zone within one working day after the operator receives actual notice. ~~An excavator is required to serve notice of excavation after that time if location is required.~~

HOUSE JUDICIARY COMMITTEE
KANSAS LEGISLATURE
February 11, 1993

TESTIMONY OF LARISSA JOHNS
DIRECTOR, CUSTOMER & SUPPORT SERVICES
KANSAS PUBLIC SERVICE

Chairman O'Neal, Members of the House Judiciary Committee, my name is Larissa Johns. I am Director, Customer & Support Services for Kansas Public Service (KPS) in Lawrence, Kansas. The testimony I am providing today reflects our company's position, as well as those of our sister divisions in Kansas, Peoples Natural Gas & WestPlains Energy. Our companies provide electric and gas service to 124,000 customers in Kansas.

I am testifying in support of HB 2041.

The safety and integrity of our distribution and transmission systems are of the highest priority. However, the integrity of these systems is violated each time an excavator hits a line. Our companies are members of the Kansas One Call System so that we can provide line locations and avoid such incidents. Unfortunately, excavators don't always call for location markings.

Line repair is expensive and damages are difficult to collect. Costs not recovered due to line hits will eventually be borne by ratepayers.

Although line repair expense is a problem, our primary concern is safety. Someday an excavator is going to hit a line that results in extensive property damage and/or serious injuries or death. This legislation mandates prior

notification of excavating activity, as well as providing civil penalties and injunctive relief for violation of the act.

We believe there should be one state-wide notification center.

This is a very important piece of legislation and we encourage your support of HB 2041.



Mike Reecht
State Director
Government Affairs
Kansas

Capitol Tower
400 SW 8th Street, Suite 301
Topeka, KS 66603
Phone (913) 232-2128

TESTIMONY OF BEHALF OF AT&T
BEFORE THE HOUSE JUDICIARY COMMITTEE
MIKE REECHT
HB 2041
FEBRUARY 11, 1993

Mr. Chairman:

My name is Mike Reecht. I am Director-State Government Affairs for AT&T in Kansas. I appreciate the opportunity to appear before you and your committee today.

AT&T supports the concept of the mandatory "One Call" legislation contained in HB 2041. AT&T has approximately 800 miles of fiber and copper cable buried across the state of Kansas. It is imperative, in order to provide continual, uninterrupted long distance service to which Kansans are accustomed, that Kansas support a mandatory, statewide notification center. The center should have the ability to handle emergency requests to locate underground facilities on a 24 hour a day/7 days a week basis.

Further, AT&T concurs with the amendment that was offered by the Kansas Corporation Commission which changes the horizontal tolerance zone from 12 to 24 inches, and deletes the reference to a 24 inch vertical direction.

In summary, AT&T requests your support of this important legislation that will help ensure the reliability of quality telecommunications service that is essential to all Kansans.

THE KANSAS CONTRACTORS ASSOCIATION, INC.



1923 - 1993

70
YEARS OF
EXCELLENCE

316 SW 33RD ST PO BOX 5061
TOPEKA KS 66605-0061
PHONE (913) 266-4152
FAX (913) 266-6191

TESTIMONY

BY THE KANSAS CONTRACTORS ASSOCIATION
BEFORE THE HOUSE JUDICIARY COMMITTEE

REGARDING

HOUSE BILL 2041

Mr. Chairman, and members of the House Judiciary Committee,
I want to thank you for allowing me the opportunity to appear
before you this afternoon to discuss underground utility damage
prevention.

My name is Bob Totten, I am the Public Affairs Director for
the Kansas Contractors Association. Our association represents
more than 330 heavy, highway, and municipal utility contractor
and association member firms in the Kansas construction industry.

I am here today to support House Bill 2041 with some very,
very minor changes. There have been numerous attempts to
establish a public policy to avoid damage to underground utility
facilities. The measure before you today is one of the best we
have seen. It incorporates many of the concerns we have had in
the past and there are some very few changes we would like to
see.

Page Two
Testimony
by The Kansas Contractors Association
Before the House Judiciary Committee on
House Bill 2041

In the measure before you on page two, line 39, it seeks a notice of at least 3 days and not more than 10. Our contractors are seldom able to predict 3 days in advance where they are going to be or what they are going to work on. We would like this measure to be amended to require at least two days notice and a maximum of ten. With the weather the way it is in Kansas, we are seldom able to determine for sure where we will be working in three days and we would like that to see that reduced.

In addition, we would like to see a "one call system" implemented in the state as a means of avoiding damage to underground facilities. By one call, we mean a system where an individual or a contractor would make only one call to a central number to determine the number of operators in a certain location with underground facilities.

As it is now written, we are concerned that the provisions of this measure may require several notification centers around the state and we would be required to carry a group of phone numbers to determine who to call first when we want to dig. One central number would make it easier and more practical to have instead of several numbers in the state as a whole.

Page Three
Testimony
by The Kansas Contractors Association
Before the House Judiciary Committee on
House Bill 2041

Otherwise, we are quite pleased to see House Bill 2041 require that all operators who have an underground facility become members of the notification system. Until we have everyone involved signed up, it will still be a problem in determining who should be notified.

I thank you for your attention to these minor concerns and I stand ready for questions on this matter.

2/5/93



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**TESTIMONY ON BEHALF OF KANSAS ONE-CALL SYSTEM, INC.
BEFORE THE 1993 HOUSE JUDICIARY COMMITTEE
DAWN NONHOF
FEBRUARY 11, 1993**

Good afternoon. My name is Dawn Nonhof and I'm the General Manager of Kansas One-Call System, Inc. I'd like to take a few minutes to speak in favor of passage of House Bill 2041.

I've been involved in underground damage prevention and one-call operations for approximately one decade. In that time, I've come to realize that preventing damage to sub-surface facilities benefits everyone: the excavator, the facility owner and, most importantly, the general public.

Over the last twenty years, our nation's underground infrastructure has grown exponentially and increasingly critical.

We need look no further than 9-1-1 service to see an exceedingly crucial link in our communications infrastructure. Prime time television shows detail the life-saving efforts of this now integral service. It is a link which is taken for granted until disrupted. 9-1-1 is a single example of how modern society relies on the uninterrupted provision of services carried by a below-ground network of pipes, wires and fiber optics.

Without adequate knowledge of the location of these underground communication, electric and petroleum lines, an excavator is gambling with not only his personal safety, but that of everyone in his employ and the general public. Each time a hole is dug without adequate knowledge of the existence or location of buried underground lines, an excavator digging is playing a form of Russian Roulette.

A statewide one-call center serves the excavating public by providing a single point of contact to determine the location of underground lines. Placing a single phone call puts an excavator in contact with multiple utility companies within the State of Kansas. The one-call center obtains the pertinent information from the excavator and forwards it to its utility members. In most cases, these utility companies receive a printed copy of the request for marking of underground facilities over a teleprinter or fax machine. Upon receipt of the message, the underground line owner dispatches a technician to the work site who marks the route of the line with stakes or paint.

The importance of a statewide notification system cannot be overstated. It simplifies the contact process for the excavator: only one phone number must be remembered for digging done anywhere in Kansas. Several states in the Pacific Northwest are served by multiple one-call systems, often limited to county-wide areas, creating what some call a "two-call" system. I have personally seen the confusion such fragmentation causes. The resulting frustration inhibits, rather than promotes, the desire to call prior to digging.

House Bill 2041 further benefits the excavator by requiring any underground line owner of consequence to subscribe to one-call services. Membership by all underground line owners strengthens the one-call system and gives the excavator greater incentive to make use of it.

The facility owner obviously benefits because it is given the opportunity to act to prevent service interruption and facility damage. Once notified of an excavation, the underground line owner can take any action it deems necessary to protect provision of vital services. This can include not only marking facilities in the area, but meeting with the excavator. An inspector may be sent to supervise digging in the area of particularly key facilities.

There are several costs incurred as a result of an underground damage, but the consumer (the general public) is the ultimate loser. The consumer either pays the cost for damaged lines through increased rates or by loss of service.

While it is true that an excavator can be billed for damage caused to an underground line, many times damages are caused by persons unknown. The cost for these damages will ultimately be borne by the ratepayer.

The general public also pays through the loss of essential services. Many of you may remember hearing of air traffic control being lost as a result of a severed phone line. You may recall stories of suburban neighborhoods being evacuated because an underground pipeline was struck. And who has never been aggravated by the loss of cable television during a major sporting event, or while watching a favorite movie. The list of problems, both major and minor, caused by service disruptions, would take days to articulate.

In the final analysis, House Bill 2041 does only one thing: it protects people. It protects the excavator from injury by assisting him/her in identifying potentially hazardous situations. It protects each of us by safeguarding vital services which are no longer conveniences but necessities.

Thank you for your time and, hopefully, your support for House Bill 2041.

Comments on HOUSE BILL 2041
February 11, 1993
House Judiciary Committee

Mr. Chairman, members of the committee, I am Louis Stroup, Jr., executive director of Kansas Municipal Utilities, Inc., a statewide organization of cities that operate municipal water, gas and electric systems.

We support the one-call concept, but we can not support HB 2041 without amendments which would make it easier for our smaller utilities with limited staffs and resources to comply.

I have provided the committee with a balloon of our requested amendments and comments on why the changes are needed. We feel it is important to make these changes to accomadate the 434 municipal water systems in Kansas, plus other water utilities such as Johnson County Water District No. 1, 70 plus municipal gas distribution systems and 122 municipal electric systems.

HOUSE BILL No. 2041

By Committee on Energy and Natural Resources

1-14

8 AN ACT enacting the Kansas underground utility damage prevention
9 act; concerning prevention of damage to certain underground util-
10 ity facilities.

11
12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. This act shall be known and may be cited as the
14 Kansas underground utility damage prevention act.

15 Sec. 2. As used in this act:

16 (a) "Damage" means any impact or contact with an underground
17 facility, its appurtenances or its protective coating, or any weakening
18 of the support for the facility or protective housing which requires
19 repair.

20 (b) "Emergency" means any condition constituting a clear and
21 present danger to life, health or property, or a customer service
22 outage.

23 (c) "Excavation" means any operation in which earth, rock or
24 other material on or below the ground is moved or otherwise dis-
25 placed by any means, except tilling the soil, or railroad or road and
26 ditch maintenance that does not change the existing railroad grade,
27 road grade and/or ditch flowline, or operations related to exploration
28 and drilling of crude oil or natural gas, or both.

29 (d) "Excavator" means any person who engages directly in ex-
30 cavation activities within the state of Kansas.

31 (e) "Facility" means any underground line, system or structure
32 used for producing, gathering, storing, conveying, transmitting or
33 distributing gas, electricity, communication, petroleum, petroleum
34 products or hazardous liquids.

35 (f) "Marking" means the use of stakes, paint or other clearly
36 identifiable materials to show the field location of underground fa-
37 cilities, in accordance with the resolution adopted August, 1984, by
38 the utility location coordination council of the American public work
39 association.

40 (g) "Notification center" means ~~a center operated by an organi-~~
41 ~~zation which has a minimum of five underground operators partici-~~
42 ~~ipating and has as one of its purposes to receive notification of~~
43 ~~planned excavation in a specified area from excavators and to dis-~~

Kansas One Call.

Comment: We feel there should be only one statewide notificaton center so that one call is sufficient, not a number of regional or various other centers.

1 ~~seminate such notification of planned excavation to operators who~~
 2 ~~are members and participants.~~

3 (h) "Operator" means any person who owns or operates an un-
 4 derground facility, except for any person who is the owner of real
 5 property wherein is located underground facilities for the purpose
 6 of furnishing services or materials only to such person or occupants
 7 of such property.

8 (i) "Preengineered project" means a public project or a project
 9 which is approved by a public agency wherein the public agency
 10 responsible for the project, as part of its engineering and contract
 11 procedures, holds a meeting prior to the commencement of any
 12 construction work on such project in which all persons, determined
 13 by the public agency to have underground facilities located within
 14 the construction area of the project, are invited to attend and given
 15 an opportunity to verify or inform the public agency of the location
 16 of their underground facilities, if any, within the construction area
 17 and where the location of all known and underground facilities are
 18 duly located or noted on the engineering drawing as specifications
 19 for the project.

20 (j) "Permitted project" means a project where a permit for the
 21 work to be performed must be issued by a state or federal agency
 22 and, as a prerequisite to receiving such permit, the applicant must
 23 locate all underground facilities in the area of the work and in the
 24 vicinity of the excavation and notify each owner of such underground
 25 facilities.

26 (k) "Person" means any individual, partnership, corporation, as-
 27 sociation, franchise holder, state, city, county or any governmental
 28 subdivision or instrumentality of a state and its employees, agents
 29 or legal representatives.

30 (l) "Tolerance zone" means the area within 12 inches of the out-
 31 side dimensions in all horizontal directions, and 24 inches in vertical
 32 ~~direction of an underground facility.~~

33 (m) "Working day" means every day, except Saturday, Sunday
 34 or a legally proclaimed local, state or federal holiday.

35 Sec. 3. An excavator shall not engage in excavation near the
 36 location of any underground facility without first having ascertained,
 37 in the manner prescribed in this act, a location of all underground
 38 facilities in the proposed area of the excavation.

39 Sec. 4. (a) An excavator shall serve notice of intent of excavation
 40 at least three full working days, but not more than 10 working days
 41 before commencing the excavation activity, on each operator having
 42 underground facilities located in the proposed area of excavation.

43 (b) The notice of intent of excavation shall contain the name,

city

Comment: Cities also permit some projects

24

Comment: This is a critical amendment

1 address and telephone number of the person filing the notice of
 2 intent, the name of the excavator, the date the excavation activity
 3 is to commence and the type of excavation being planned. The notice
 4 shall also contain the specific location of the excavation if it is to
 5 take place within the boundaries of a city or the specific quarter
 6 sections if outside the boundaries of any city.

7 (c) The provisions of this section shall not apply to a preengi-
 8 neered project or a permitted project, except that the excavators
 9 shall be required to give notification in accordance with this section
 10 prior to starting such project.

11 Sec. 5. ~~(a) This act recognizes the value of and encourages and~~
 12 ~~authorizes the establishment of notification centers.~~ Each operator
 13 who has an underground facility shall become a member of a no-
 14 tification center.

15 (b) Upon the establishment of a notification center in compliance
 16 with this act, notification, as required by section 4, to operators who
 17 are members of the notification center shall be given by notifying
 18 the notification center by telephone at the toll free number. The
 19 content of such notification shall be as required by section 4.

20 (c) Each operator who has an underground facility within the
 21 defined geographical boundary of a notification center shall be af-
 22 forded the opportunity to become a member of the notification center
 23 on the same terms as the original members.

24 (d) A suitable record shall be maintained by notification centers
 25 to document the receipt of notices from excavators as required by
 26 this act.

27 Sec. 6. (a) An operator served with notice shall, in advance of
 28 the proposed excavation, unless otherwise agreed between the par-
 29 ties, inform the excavator of the tolerance zone of the underground
 30 facilities of the operator in the area of the planned excavation by
 31 marking, flagging or other acceptable method ~~no sooner than two~~
 32 ~~working days prior to planned excavation.~~

33 (b) An operator is responsible for ~~maintaining~~ the identification
 34 of the tolerance zone by marking, flags, or other locating identifiers.
 35 ~~for seven working days.~~ An excavator ~~is required to serve notice of~~
 36 excavation after that time if location is required.

37 (c) If the operator notifies the excavator that it has no under-
 38 ground facilities in the area of the planned excavation, fails to respond
 39 or improperly marks the tolerance zone for the facilities, the exca-
 40 vator may proceed and shall not be liable for any direct or indirect
 41 damages resulting from contact with the operator's facilities, except
 42 that nothing in this act shall be construed to hold any excavator
 43 harmless from liability in those cases of gross negligence or willful

Comment: As mentioned earlier, we support a single statewide center

As far in advance as practical, but not sooner than 5 working days
 prior to planned excavation.

Comment: This would encourage excavators to call for "locates" well
 in advance of the proposed excavation. Many times, depending on the
 type and extent of the excavation, the utility is required to provide
 an inspector on the job if an operator has reason to believe that
 damage could occur through excavation activities

the original marking of

is required to maintain the markings, flags or other locating
 identifiers and

Comment: Once an operator makes the original markings, the maintenance
 of those markings should be required of the excavator, not the
 operator. As written, this causes a major problem for smaller
 utilities (cities) with limited staff. They don't have personnel in
 most cases to continue to run out and check markings for a 7 day
 period.

1 and wanton conduct.

2 Sec. 7. In the case of an emergency which involves danger to
3 life, health or property or which requires immediate correction in
4 order to continue the operation of an industrial plant or to assure
5 the continuity of public utility service, excavation, maintenance or
6 repairs may be made without using explosives, if notice and advice
7 thereof, whether in writing or otherwise are given to the operator
8 or notification center as soon as reasonably possible.

9 Sec. 8. This act shall not be construed to authorize, affect or
10 impair local ordinances, resolutions or other provisions of law con-
11 cerning excavating or tunneling in a public street or highway or
12 private or public easement.

13 Sec. 9. Upon receiving information as provided in section 6, an
14 excavator shall exercise such reasonable care as may be necessary
15 for the protection of any underground facility in and near the con-
16 struction area when working in close proximity to any such under-
17 ground facility.

18 Sec. 10. When any contact with or damage to any underground
19 facility occurs, the operator shall be informed immediately by the
20 excavator. Upon receiving such notice, the operator shall immedi-
21 ately dispatch personnel to the location to provide necessary tem-
22 porary or permanent repair of the damage. If a serious electrical
23 short is occurring or dangerous gases or fluids are escaping from a
24 broken line, the excavator shall immediately inform emergency
25 personnel.

26 Sec. 11. (a) In a civil action in a court of this state when it is
27 shown by competent evidence that damage to the underground fa-
28 cilities of an operator resulted from excavation activities and that the
29 excavator responsible for giving notice of intent to excavate failed to
30 give such notice, or excavation occurred outside the notice and
31 marked area, there shall be a rebuttable presumption that the ex-
32 cavator was negligent for failing to give such notice or abide by the
33 notice given.

34 (b) The provisions of subsection (a) shall not apply if the operator
35 whose underground facilities are damaged fails to participate in a
36 notification center.

37 (c) In no event shall the excavator be responsible for any damage
38 to underground facilities if such damage was caused by the failure
39 of the operator to correctly and properly mark the location of the
40 tolerance zone of the damaged facility.

41 Sec. 12. Any person to whom this act applies, who violates any
42 of the provisions contained in this act, shall be subject to civil
43 penalties and injunctive relief as set out in K.S.A. 66-1,151, and

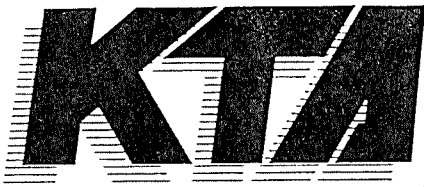
1 amendments thereto.

2 Sec. 13. This act shall be administered and enforced by the state
3 corporation commission of the state of Kansas.

4 Sec. 14. If any provision of this act or the application thereof to
5 any person or circumstance is held invalid, the remainder of the act
6 and the application of such provision to other persons or circum-
7 stances shall not be affected thereby.

8 Sec. 15. This act shall take effect and be in force from and after
9 its publication in the statute book.

Comment: The committee may wish to discuss the possibility of adding a section which would address the rights of operators to bill for damages for time, materials, equipment and lost commodity such as natural gas, oil, etc. Cities assert that often when an excavator is billed for damages, they are more careful in the future. Also, when a major outage occurs with natural gas, the cost to the utility (city) is significant since each customer must first be shut off and then relit. And the cost of lost gas may exceed all other costs.



Legislative Testimony

Kansas Telecommunications Association, 700 S.W. Jackson St., Suite 704, Topeka, KS 66603-3731

Testimony before the House Committee on the Judiciary

HB 2041

February 26, 1992

Mr. Chairman, members of the committee, I am Rob Hodges, President of the Kansas Telecommunications Association. Our membership is made up of telephone companies, long distance companies, and firms and individuals who provide service to and support for the telecommunications industry in Kansas.

The KTA supports the concepts of HB 2041. Many KTA member companies are already participating in the voluntary "one call" program.

KTA members support changing the tolerance zone definition to 24 inches in all horizontal directions. They also support language that would make it clear that there is to be only one notification center in Kansas.

One feature our members particularly like about HB 2041 is that city and county excavators would be subject to the notification requirements prior to excavation. KTA members seem to have more trouble with those excavators than with most others. We feel the bill will be most effective if city and county excavators remain subject to its provisions.

Thank you, Mr. Chairman, for the opportunity to appear and tell you of our support for HB 2041.

TESTIMONY OF STEVE W. AREA
SOUTHWESTERN BELL TELEPHONE COMPANY
KANSAS HOUSE BILL 2041

My name is Steve W. Area, Manager-Maintenance for Southwestern Bell Telephone (SWBT) in Kansas. My responsibilities include coordinating all cable locating in Kansas.

SWBT has been a member of the Kansas One Call program since 1986 and is a proponent of House Bill 2041 for two primary reasons.

First, and utmost, is the safety of the general public. House Bill 2041 is needed to require an excavator to give an operator like SWBT, sufficient notice prior to digging. This will give the operator an adequate opportunity to locate and mark those areas around its underground facility that are not suitable for excavation. SWBT has buried cables serving more critical services than ever before. Emergency services such as 911, hospitals, fire and law enforcement can be isolated by a scoop of the shovel.

The second important reason is the ease of operation for the excavator. Currently, excavators are forced to call multiple operators for the location of each operator's underground facilities. This is necessary because not all operators are members of the present notification system. If all operators are required to load their databases into a single system, an excavator truly will have to make only "one call" to locate all underground facilities in a given location.

In summary, House Bill 2041 will help ensure the safety of the general public by requiring excavators to call before they dig and require operators to be a member of the notification center. When excavators and operators are working together to avoid unnecessary property damage, personal injuries and service outages, everyone comes out a winner.



TESTIMONY OF HUGH J. TAYLOR
OF THE BOARD OF PUBLIC UTILITIES
IN REGARD TO
HOUSE BILL NO. 2041

My name is Hugh J. Taylor. I am Manager of Rates and Regulations for the Board of Public Utilities of Kansas City, Kansas. The Board of Public Utilities is the largest municipally-owned utility in the State and serves electricity and water to the City of Kansas City, Kansas.

The Board of Public Utilities basically supports the concept provided for by this House Bill, however, there are some technical difficulties with the language of the bill that will be costly and difficult to administer.

The first area of concern in the proposed legislation is in Section 2, subparagraph (1), concerning the "tolerance zone." As defined by the bill, the utility must locate within 12 inches in all horizontal directions and within 24 inches in vertical direction of any underground facility. This is simply not practical. While at any given location one may or may not be able to locate within such dimensions, as you move away from a particular location stake where those dimensions have been determined, the depth can change and the alignment can change so that if such measurements are correct, they are correct only at the precise location of measurement. Utilities

do not generally have adequate staff to provide on-site continual monitoring, which is the only way that the tolerance zone provision can be complied with. I recommend that this paragraph be amended by adding the phrase at the end of the sentence, "at the point of identification."

Subparagraph (a) of Section 6 should be changed to permit the operator to place markers at least 3 days ahead of planned excavation. Subparagraph (b) of Section 6 requires that the utility maintain responsibility for 7 working days for flags or markings or other locating identifiers. Again, this is not practical, it would simply mean that the utility would have to monitor the existence of those indicators from the date they were placed since the contractor would have 7 days to perform work in that area. I recommend that this subparagraph be eliminated in its entirety.

Section 11 of the proposed legislation appears to be the most harmful in that it throws the burden of responsibility for notice from the excavator to the utility. Presently, the excavators contact the Board of Public Utilities before commencing work. While the Board of Public Utilities does not belong to a 1 call system, contractors are made aware of that fact and we have had no difficulty in being notified by contractors working in the area.

This bill, if enacted into law, would appear to require the utility to join a 1 call system, in which case the 1 call system would notify the utility and the utility would have to then contact the contractor. This is a shifting of responsibility in call origination. This section also shifts the burden of proof from the excavator to the utility in instances of legal action. Our City legal department opposes this, as well as our operational staff. It is our position that Section 11 should be eliminated in its entirety.

This bill, if approved, would require that the utility add 2 to 3 permanent employees, plus \$12,000 to \$15,000 worth of equipment and an expense per call to support the 1 call system. We believe the legislation is unnecessary. Those wishing to belong to a 1 call system may already do so within the Kansas City area. The utility, if it chooses not to belong to a 1 call system, may similarly have those cost savings.



KANSAS TRIAL LAWYERS ASSOCIATION

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TESTIMONY BEFORE THE HOUSE JUDICIARY COMMITTEE
BY: William J. Pauzauskie
Kansas Trial Lawyers Association
February 11, 1993

Re: House Bill 2041
Kansas Underground Utility Damage Prevention Act
By the Committee on Energy and Natural Resources

Mr. Chairman and Members of the Committee:

I. INTRODUCTION

I appear in opposition to some portions of House Bill No. 2041. KTLA is in agreement with the utility and contractors that safety in the work-place is of primary concern to all Kansans. Industry and OSHA has recognized this and set forth a standard of conduct, including the National Electric Safety Code, formulated by industry to help prevent accidents, injuries and deaths from contact with high-power overhead electric lines and thereby preventing subsequent lawsuits; and OSHA by implementing a 10 foot rule on the employer.

However, after the injury occurs, this organization directly and indirectly represents the interests of three (3) groups in the work place in the litigation that follows. Firstly, we represent the interests of the injured party, and the family. Secondly, we represent the subrogation interests of the workman's compensation insurance carrier for the injured workmen. We attempt to reduce the liability in workman's compensation costs to the employer by recovery of money, pursuant to the statutory lien of the workman's

HOUSE JUDICIARY
Attachment #12
02-11-93

compensation insurance carriers. Thirdly we indirectly save monies for the citizens for the State of Kansas. If sufficient monies are collected for permanent injuries, the State's social care system has correspondingly reduced costs for the health, education and medical care of the injured party and his family.

Accordingly, at various times we will represent the interests of the contractors when the utility has made an error, or the interests of the utility when their injured workmen needs to recover for the negligence of others.

I ask the committee to look at the bill not only as a safety bill, but to insure a level playing field which will allow the injured person and his family to receive just compensation for their injuries, and protect the interests of both the contractor and the public utility and State of Kansas. In my opinion, this bill does not meet that goal, and I would like to point out some specific examples of why it does not meet that goal.

II. SECTION 11 IS ONE-SIDED AND UNFAIR

The "rebuttal presumption" only on the part of the excavator.

When digging around the underground utilities, a contractor normally wants any utilities within the easement marked. The contractors normally will tell the utility so many blocks north, then three blocks south, then four blocks

north, and everyone knows they have to dig within the easement.

The problem occurs in determining what "notice" was given and what the "marked" area is. Is it the marked area within the easement, which is only partially marked by the utility, or is it something else?

Secondly, why shouldn't Section 11(a) also state that the utility is negligent, if it fails to timely inform, or if it misinforms, or fails to adequately mark the areas within the easement.

Section 11(c) only states an excavator should not be responsible for any damage to the underground facility if the damage is caused by the operator's failure to correctly and properly mark the location of the tolerance zone. If the legislature intends to be fair to both parties, then why should it give the rebuttable presumption only in favor of the operator, as set forth in Section 11(a), when the operator/utility failed to adequately mark the underground line?

To conclude the discussion of Section 11, I suggest that at trial there could be two sets of rebuttable presumptions, both being supported by competent evidence.

The excavator is going to have competent evidence that the utility failed to adequately mark, but would not be entitled to rebuttable presumption, and the utility is going to have some competent evidence of a supported violations act,

and be entitled to a rebuttable presumption, even though the facts as alleged by the utility are contested by the excavator.

III. COMMENTS ON SECTION FOUR

Concerning Section 4 and the notice of intent of excavation being at least 3 but not more than 10 working days before commencing excavation, the failure of which creates a violation of a rebuttable presumption. This language is not consistent with the real world experiences. What if the excavator gives notice, the utility comes out and marks the lines, then work is begun 24 hours later? Pursuant to the wording of the present Act there is still a technical violation because they didn't give three days notice.

Or, what if the climate, weather, or a change in conditions arise, and the easements are marked but the work begins 11 days after notice? So we then have a technical violation of the Act which seems to have no rhyme or reason to the real issue, which is the adequacy of the lines which are marked.

IV. COMPARISON OF HOUSE BILL 2410 AND 2041

I am also concerned with the language of House Bill 2410, the Overhead Power-line Accident Prevention Act, and note that the Overhead Act, Section 6(c) clearly states that, "nothing in this act is intended to limit or modify the provisions of

(...) K.S.A. 60-258a, (...) or the national electrical safety code, which would otherwise be applicable."

The national electric safety code also applies to underground digging violations. If any act is passed, identical similar language should be in both bills so there can be no later argument that the legislative intent was to apply the national electric safety code to one act but not apply the national electric safety code to another act.

V. WORKMAN'S COMPENSATION

The net effect of the "rebuttable presumptions" might be to reduce the excavator's ability to recover workman's compensation benefits, when there is contested testimony as to what was told the utility agent. The dispute can arise as to the timing of the intended excavation, the path that the excavator will dig in, whether two-foot markings were made in a 15-foot easement and the like. In a case recently decided by the Supreme Court, the operators' workmens compensation insurance carrier is able to recover 99% of their losses, as only 1% comparative negligence was assessed against them and 99% against the utility. Testimony from the national electric safety code was presented to the jury, different testimony concerning the application of the code was made and most issues were in dispute.

If that same case were tried under the underground utility damage prevention act, the utility might have been

entitled to a rebuttable presumption, but the operator would not have been entitled to a rebuttable presumption, for the simple reason that the utility could have presented some competent evidence of marking, and the law would not then allow the operator to have the benefit of the proposed law.

Trial lawyers have an interest in seeing that justice is done and we do not see why utilities should be favored by the legislature as opposed to excavators.

The operator was able to recover 99% of it's workmen's compensation lien pursuant to the jury's decision.

VI. SUGGESTED CHANGES

To resolve the problem set forth above, I respectfully suggest that:

- 1) Section 11 be deleted.
- 2) In the alternative, if Section 11 is not deleted, it should be amended to allow rebuttal presumptions for either party who are found to have violated the act, that some language should be added to include the obligation of the utility to timely respond to the call of the excavator and adequately mark all utility lines within the easement.
- 3) Section 2(d) defines excavator as being any person who engages in excavation activities in the state of Kansas, and covers a member of a household being in a back yard. Is it reasonable to expect a homeowner to call the utility under these circumstances? Where is the obligation of

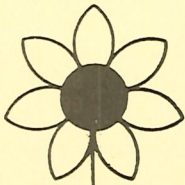
the utility to inform the public of the potential danger?

4. If the bill is passed, the language of the this act should be changed consistent with the national electric safety code or K.S.A. 60-258(a) language of House Bill 2410.

5. Further investigation into the nature and extent of underground utility injuries should be requested.

6. The act's affects on the ability of persons to reduce workmen's compensation benefits should be studied.

Thank you for the opportunity to comment on this bill, and your attention during my comments. I will be happy to answer any questions that any of the members may have.



HOME BUILDERS ASSOCIATION OF KANSAS, INC.

HOUSE JUDICIARY COMMITTEE
FEBRUARY 11, 1993

HB 2041

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Vernon L. Weis 1992

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

My name is Janet Stubbs appearing today for the Home Builders Association of Kansas in opposition to HB 2041 in the current form.

We support the concept of the "One Call" system and do not support excavation prior to obtaining the location of the underground facilities. We agree with mandatory membership by all "operators" of underground facilities and cannot support such legislation without this requirement.

There is concern regarding the notification time requirement. Excavating contractor members of this Association have a good working relationship with the utilities and have quick response to their calls under the current operation. To have a requirement for notice of three working days prior to excavation is excessive. It is feared the response time will be the days permitted by the statute.

We urge you to amend this to a maximum of 2 working days and question how the whole notification timing would work. Section 4 on page 2 and again in Section 6(b) is confusing.

An excavator is to give notice 3 working days but not more than 10 working days in advance of the excavation activity. An operator is responsible for maintaining the identification of the zone for 7 days. If the operator marks the area on day two, the excavator begins work on day 10 and hits an underground facility, who is liable?

The tolerance zone for the vertical direction is another area of concern and we request this measurement be reduced to the 12 inch provision for the horizontal direction.

We thank you for the opportunity to appear today and urge you to adopt the amendments requested.



HOUSE JUDICIARY
Attachment #13
02-11-93

WATER DISTRICT NO. 1 OF JOHNSON COUNTY

7601 Holliday Drive
Kansas City, Kansas 66106

Tel. (913) 268-2815
FAX (913) 375-1928

February 9, 1993

Honorable Michael O'Neal
Chairman, House Judiciary Committee
Room 426 South
State Capitol
Topeka, KS 66612

Re: House Bill 2041

Dear Chairman O'Neal:

This letter is to address our concerns on House Bill 2041 regarding underground utility location and damage prevention. We understand that, although this bill was sponsored by the Committee on Energy and Natural Resources, it is to be addressed at a Judiciary Committee hearing at 3:30 pm on Thursday, February 11, 1993.

Our primary concerns are:

Section 2(e) The definition of the term "facility" completely omits the reference to water lines or sewer lines which are definitely underground facilities.

Section 2(l) The definition of "tolerance zone" is much too tight or restrictive, at least for water lines. The ability of locating equipment to pinpoint a cast iron water line of 6" or 8" in diameter to the stated tolerance is marginal at best, especially if the line is under thick pavement. For larger lines, the ability of locating equipment becomes less accurate. Also, locating equipment for water lines is not as accurate the deeper the facility, and water lines are of necessity at least 3 ½ feet deep. Water lines made of cast iron or steel would be more easily located, but many water lines are made of concrete, cement asbestos, or plastic, which are not capable of being located at the tolerance zone specified.

HOUSE JUDICIARY
Attachment #14
02-11-93

Chairman Michael O'Neal
February 9, 1993

Page 2

Section 6(b)

We feel it is unreasonable to expect the operator to maintain the locate for a period of seven (7) working days. It is quite difficult to even keep up with all the thousands of requested locates of an operator's facilities, without having to return to the site numerous times within a seven working day period (actually 9 calendar days at least), to maintain or restore the marking or flagging.

The requestor or excavator should take responsibility for the locate from the time the locate is made. The schedule for the excavator's work, which precipitated the need for the locate, is entirely that of the excavator, so that whether the locate is used immediately, or seven working days hence, is within their control.

To require the operator to return to the locate site each day, for nine calendar days, to insure the locate is intact is totally unreasonable.

Section 11(a)

This allows that "there shall be rebuttable presumption that the excavator was negligent ...", even if "...it is shown by competent evidence...that the excavator... failed to give such notice, or excavation occurred outside the notice and marked area,". Why is there rebuttable presumption, if competent evidence has shown the excavator to be responsible?

Section 11(c)

As contrasted to Section 11 (a) above, the excavator is not, in any event, responsible for damage if the operator failed to locate correctly and properly the tolerance zone. No such rebuttable allowance is made for the operator's actions. Is this not inconsistent?

Section 13

Many utilities in this state are municipal functions or quasi-municipal in nature and authorized by statutes outside the jurisdiction of the State Corporation Commission. How then can this Commission administer and enforce this act on utilities outside their jurisdiction? Or does this mean such utilities are not subject to this Act?

Chairman Micheal O'Neal
February 9, 1993

Page 3

We thank you for the opportunity to express our concerns and hope the Act can result in a net benefit to the operator/excavator environment, through reasonableness and well thought out facts.

Thank you for your attention.

Respectfully submitted,



Ronald R. Goold, P.E.
Chief Engineer/Director
of Operations

RRG:tr

cc: Byron Johnson

RAWLINS COUNTY**Atwood, Kansas 67730**607 Main
FAX # 913-626-9481

MEREDITH HRNCHIR	County Clerk
CHERYL WEDERSKI	County Treasurer
CAROLYN MARSHALL	Register of Deeds
H. SCOTT BEIMS	County Attorney
JACK MARIS	Sheriff
AUDREY DIXSON	County Appraiser



CHARLES E. UNGER	County Commissioner
WILLIAM E. LEWIS	County Commissioner
GORDON R. HAWKINS	County Commissioner

Subject: HOUSE BILL 2041**UNDERGROUND UTILITY DAMAGE PREVENTION ACT**

Rawlins County is opposed to HB 2041 for the following reasons:

1. The bill is not necessary, for if an entity or contractor has deliberately destroyed an underground utility, the utility can sue with existing laws.
2. The bill leaves the impression that the entities and contractors doing work are deliberately careless and at fault.

In Rawlins County we have had many experiences with underground utilities. The main problem has been with telephone companies. Rawlins County has allowed telephone companies to use road right-a-ways at no cost to run telephone lines. When these lines were put in by sub-contractors, they were not always put where they were supposed to be, or said to be. We have found lines running through culverts, attached to bridges and not buried as deep as required. Therefore, in the course of normal maintenance these lines are occasionally damaged.

At the present time we have contracts with various underground

utilities allowing them access to county right-of-ways with the understanding they are responsible to fix damages occurred during normal maintenance. However, the county does try and inform the utilities when it will be working near utility lines.

It should be necessary for the utilities to have maps and legals on file in every courthouse describing where their lines are buried. The utilities should be liable if these papers are not filed and if lines are not properly marked.

Sincerely,

Rawlins County Commissioners

County Of Cheyenne

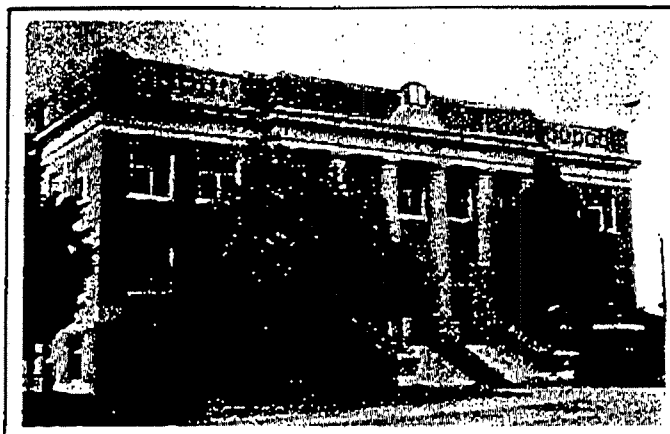
Elaine Kehlbeck
County Clerk

Gladys M. Cook
County Treasurer

E. June Henderson
Register of Deeds

Floyd E. Jensen
County Attorney

Ray Lee
County Sheriff



Wm. W. Leach
Commissioner

Roger Faulkender
Commissioner

Margaret Bucholtz
Commissioner

David Fleming
Road Supervisor

913-332-2401

212 East Washington, P.O. Box 985
St. Francis, Kansas 67756

Subject: HOUSE BILL 2041

UNDERGROUND UTILITY DAMAGE PREVENTION ACT

Cheyenne County is opposed to HB 2041 for several reasons in correspondence to the sections of this bill:

Section 3: It is nearly impossible for a county to contact all utilities before excavation if we don't have a listing of these utilities or a number we can call to confirm "all" utilities. Counties originally allowed utilities right-of-way access to advance their systems and also to aid taxpayers. Now, it seems that the utility companies think that they own the right-of-ways and that counties are the culprit!

Section 4: Currently, an excavator is allowed 48 hours to notify utilities before work is engaged, which is sufficient time to properly locate their lines. Now, they want that notice increased another 24 hours, which delays work progress and costing more tax dollars.

Post-It™ brand fax transmittal memo 7671		# of pages ▶
To <i>Ann Smith</i>	From <i>Chey. Co.</i>	
Co.	Co.	
Dept.	Phone <i>Attachment #1</i>	
Fax # <i>933-4830</i>	Fax # <i>02-11-93</i>	

Section 5: This act basically states that any underground utility shall have a notification center. This law should be revised so that all underground utilities have just one joint notification center. This law should be mandatory at this current time to eliminate any "false" utilities and aid excavators to do their job properly and safely.

Section 6: This law has a very critical area referring to the definition of the "tolerance zone". All operators need to be more defined than "12" horizontally and "24" vertically, when locating a line to protect the safety of the excavator.

Recapping some past events in our county, makes us more convinced that utilities should spend more effort in protecting their lines by laboring, not lobbying.

Telephone companies are a major problem in our county mainly due to "low bid" contractors installing the original cable. There are several cases where the cables was not installed at the proper depth or the proper location. Our County Road Dept. has had several culverts ripped by "cable layers" which then eventually got undermined by water creating a hazard to the travelling public! There are also several places that the motor grader operators need to raise their blade during normal maintenance to avoid cutting a line, therefore doing our roads injustice.

We have even hit a natural gas pipeline that was only 12" deep and was located more than 6' from the operator's marking flags. It is a Federal and State regulation to keep these transmission lines at lease 36" below the surface of the ground and yet we was billed for the repair of this line and the loss of gas.

It is pertinent that all underground utility companies provide the proper maps and update files in every courthouse to protect their lines and the safety of human lives.

Sincerely,

Cheyenne County Commissioners

Margaret Burdett
William W. Regan
Roy Faulkner

Attachment #14 — 7
02-11-93

County Of Decatur

Herschel B. Betts
Doylo B. Brown
Ralph D. Ungor
Commissioners
913-475-2922

Marilyn Horn
County Clerk
913-475-2132

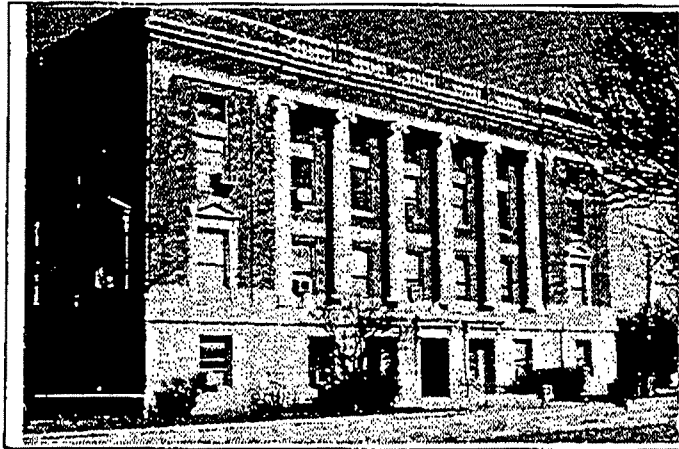
Pat Fringer
County Treasurer
913-475-2521

Steven W. Hirsch
County Attorney
913-475-3082

Ken Badsy
County Sheriff
913-475-3884

Patricia M. Whotzel
Register Of Deeds
913-475-3051

John Barrott
Ambulance Director
913-475-2132



P. O. Box 28, Oberlin, Kansas 67749-0028

February 9, 1993

John E. Bromor
Magistrate Judge
913-475-3161

Charlotte Moints
Clerk Of The District Court
913-475-2932

Bob Keenan
Road Supervisor
913-475-3041

Charles F. Votapka
County Weed Director
913-475-3094

Eugene W. Wurm
County Appraiser
913-475-2627

Doan Aldridge
County Health Nurse
913-475-3090

Jeanne Pachnor
Chief Dispatcher
913-475-3884

ATTN: Energy and Natural Resources House Committee
Representative Carl Holmes, Chairperson
115-S State Capitol Topeka, Kansas

Decatur County feels road right of ways are primarily designed for roads not utility purposes and we oppose HB 2041 for several reasons.

First of all, most of our problems involving underground utilities involved one large telephone company. (We also work with two other telephone companies and several pipeline companies). We have found that frequently telephone lines are installed without notice to the county road department, that they have been "plowed through" steel culverts and concrete structures; that they are attached to bridges and/or railings; or they may be strung on the surface of the right of way. Also many other times we have found the lines to be installed in the improper location from that specified or at a depth much shallower than specified and in other cases failure to restore the disturbed area to original condition has caused subsequent water and/or wind erosion to our roads.


Therefore, in the course of normal road maintenance and moving these lines are occasionally damaged. Some phone companies do not "mark" with taller posts where the pedestals are located in the right of ways and thus are often hidden in grass and weeds growing in the right of way, subjecting them to possible damage when routine road mowing occurs.

Secondly, this bill seems to give the impression that contractors and entities are deliberately careless and therefore at fault for any damage to utilities. We do not share this viewpoint.

Decatur County feels that utilities should be required to have specific detailed maps marking the location of all lines with accurate legals and measurements included. These should be filed for each county in the respective courthouse. The utilities should be held totally responsible if these papers are not filed and if the line locations are not properly marked.

Sincerely,

ON BEHALF OF THE DECATUR COUNTY COMMISSIONERS

A handwritten signature in cursive script, reading "Ralph D. Unger". The signature is fluid and extends to the right.

Ralph D. Unger, Chairman

P 3 of 3

HOUSE BILL 2041

UNDERGROUND UTILITY DAMAGE PREVENTION ACT

It has come to the attention of the Thomas County Commissioners that House bill # 2041 could be passed before long. We are opposed to the bill for the following reasons:

1. We have had some instances in Thomas County where utility companies have hit underground lines.
2. We would not have problems if it was required that all utility companies or contractors would file their statement of approval.

We believe all of the problem would be solved if all utility companies were required to file with the Register of Deeds of every County where they have utility lines, a map and legals of the lines.

If this was done there would be very little damage in our County.

Sincerely,

Thomas County Commissioners

John P. Bremenkamp, Chairman



818 Kansas Avenue
P.O. Box 889
Topeka, Kansas 66601
Phone (913) 575-6300

TESTIMONY
TO
HOUSE JUDICIARY COMMITTEE
HOUSE BILL 2410
FEBRUARY 11, 1993
BY ED SCHAUB, WESTERN RESOURCES, INC.

Mr. Chairman, Members of the Committee:

Western Resources asked for House Bill 2410 to be introduced. We believe it will help prevent accidents, injuries, deaths and subsequent lawsuits. Here is Western Resources' interest in this legislation. People sue utility companies. People perceive that utility companies such as Western Resources have "deep pockets." We want to prevent lawsuits, regardless of the type. We believe the best way to do that is to prevent accidents, damages and injuries before they happen.

Here is a brief summary of what the bill says:

- Section 2 contains a number of definitions one of which makes it clear that the bill is primarily directed at contractors who have employees working around overhead lines. By defining "high voltage" to mean electricity in excess of 600 volts, lines going into individual residences would not be covered. Although

many of these lines are insulated, Western Resources is nonetheless always willing to come out and disconnect service, install temporary coverings, etc. in these cases as well.

- Section 3 provides that, unless precautions are taken against contact with high voltage lines, no person, tools or equipment are to come within ten feet of it. Ten feet is the standard established by OSHA, and is used in most of the other 22 states that have such laws.

- Section 4 provides that persons who want to work around overhead lines must notify the utility, which then has three days to perform a variety of actions to make the lines safe. These actions are to be done at the expense of the utility, unless they involve major activities such as rerouting current or relocating conductors. Even in these cases, a procedure is established for resolution of disputes about cost.

- Section 5 requires the posting of warning signs so that employees are advised of the need to seek protection from electric contact if they are to be working within ten feet of high voltage lines.

- Section 6 provides civil penalties for cases where employers or contractors fail to provide notice before work is done. These penalties are not aimed at the employees themselves. This section also provides (at subsection (b)) that, in the event of a civil lawsuit, there is a rebuttable presumption of negligence on the part of the violator. I will talk about this more a little later. This section also makes it clear that the comparative

negligence law is in no way affected, nor are the provisions of the National Electric Safety Code.

- Finally, Section 7 takes out certain activities from the scope of Act, including highway vehicles, agricultural equipment, equipment on railroad cars, emergency vehicles and persons moving buildings, which are already covered by another state law. As I already mentioned, the law does not apply to homeowners, because the line coming from a transformer to a house is a low-voltage line not covered by the act. In addition, "authorized persons," such as other public utility workers and cable television or telephone workers do not need to let us know first, because they are normally around such lines and are trained to work around them.

Let me be very clear. IF KPL is negligent -- if we have a line in the wrong place or if we don't respond when someone calls to change a line -- then we should be responsible and liable for any damage. On the other hand, just like utility companies and other businesses, individuals should also be responsible for their own actions. If someone is going to be working around a high voltage line, all they have to do is make a telephone call. We will go out and reroute the electricity or deaden the line, so the workers will be safe around the line. If someone works around our lines and doesn't let us know and then causes damage or injuries, they should be responsible for those actions; like we are for ours. But for all of the focus on liability issues, the proposed bill is at its heart, a safety bill. In most states that have similar laws, they are codified in the sections dealing with worker safety.

Twenty-two states have overhead power laws (exhibit attached). Missouri passed its law in 1991. When this issue was last discussed in 1990, some were concerned it might take all liability away from the utility company. That was not our intent. In good faith, we suggested adding a section that adds a "rebuttable presumption." This means if a person was working around a high voltage power line and didn't call us, the law presumes he know about the line and should have called us. However, the person may present evidence to indicate why he was not at fault. This bill does not give any kind of blanket immunity to utility companies. We have based all of the factors in this bill -- distance, notification requirements, response times, etc. -- on the most common standards found in the laws of those other 22 states. I might add that the 1991 Missouri law includes the "rebuttable presumption" clause first proposed in Kansas in 1990. This bill would restore the same language in Kansas.

Some of you may recall that this bill was passed by the 1990 Legislature in the same form that you see it today, with the exception of the rebuttable presumption language in Section 6(b). Although that language was removed from the bill on final action, the version which was submitted to Governor Hayden nonetheless contained it, and it was this version which the Governor signed. Although these sections continue to be listed in the statute books, at K.S.A. 66-1701 to -1708, the validity of the entire bill, not just the one subsection, has been questioned. Passage of this bill by the Legislature would lay these questions to rest, at least for

the future, and the inclusion of Section 6(b) would put Kansas law in line with that of Missouri. For those utilities which do business on both sides of the state line, this is an important consideration.

Following enactment of the 1990 law, my company, which was then known as Kansas Power and Light, produced and distributed an informational packet which was sent to over 1,300 contractors in the state. These included painters, siding companies, roofers, general building contractors, and sign companies. In 1990 alone, over 6,000 pieces of printed material were supplied, some of which I have with me today. One of these was a Pocket Guide to Electric Line Safety which the company produced. In addition, the company printed and distributed warning signs and stickers for employers and contractors to use on their electric equipment and around their workplaces. I might also add that, following passage of the 1990 law, we responded to requests from 23 public and private agencies such as contractors and county road and bridge departments for presentation of a brief program which our Safety Department had put together.

It is often difficult to measure the effects of safety programs, in that only when the program fails does a recordable incident occur. I can tell you that our electric operating divisions have seen a steady increase in the number of telephone calls we have received from members of the public, contractors and homeowners alike, requesting us to de-energize or otherwise protect against an accidental electric contact. Each of these calls

represents an accident which might have otherwise occurred. I think it is also important for the committee to know that this is but one part of a much larger program which my company has in place for public safety. I am sure you have all seen some examples of the television, radio and newspaper ads which we periodically produce to remind the public about the need to be safe. I have an example here today which was distributed in the Wichita area newspapers last summer following the series of severe storms which moved through there. We targeted this program for Wichita area contractors to emphasize electric line hazard awareness as they were engaged in post-storm structural repairs.

In summary, what this bill does is put a burden on an employer or contractor to tell us when they are going to be working around a high voltage line. They must tell us. We don't know they're around our lines otherwise. Then it puts the burden on us to do something to make the line safe for the workers to be near. It simply makes people -- whether they're the workers or the utility company -- responsible for their own actions. It helps eliminate a cause of lawsuits. And, underlying all of the legal wording, it is intended to help protect life and property.

Overhead Powerline Safety
Comparative Statutes

<u>Date of Statute/State</u>	<u>1947 California</u>	<u>1955 Tennessee</u>	<u>1960 Georgia</u>	<u>1963 Arkansas</u>	<u>1963 Oklahoma</u>	<u>1966 New Jersey</u>
High Voltage Threshold	750 volts	750 volts	750 volts	440 volts	750 volts	750 volts
Distance Threshold	6 feet	6 feet	8 feet	10 feet	6 feet	6 feet
Civil Penalty/Criminal Penalty	Criminal	Criminal	Criminal	Criminal	Criminal	Civil
Civil Liability for Damages	No	No	No	Yes*	Yes	No
Temporary Clearance/ Costs	No	Yes	Yes	Yes	Yes	Yes
Mandatory Warning Signs	Yes	Yes	Yes	Yes	Yes	Yes
Exemptions For:						
Highway Vehicles	No	No	No	No	No	Yes
Agric. Equipment	No	No	No	No	No	No
Railroad Activities	Yes	Yes	Yes	Yes	Yes	Yes
Government Emergency Responders	No	No	No	No	No	No
Storage or Maintenance of Equipment Near Line Prohibited	Yes	Yes	Yes	Yes	Yes	Yes

*Amended in 1989. Original bill did not provide for civil liability.

Overhead Powerline Safety
Comparative Statutes

<u>Date of Statute/State</u>	1967 <u>Alabama</u>	1968 <u>Maryland</u>	1969 <u>Massachusetts</u>	1969 <u>Nebraska</u>	1971 <u>Texas</u>	1972 <u>Alaska</u>
High Voltage Threshold	750 volts	750 volts	440 volts	750 volts	600 volts	750 volts
Distance Threshold	6 feet	10 feet	6 feet	10 feet	10 feet	10 feet
Civil Penalty/Criminal Penalty	Criminal	Criminal	Criminal	Criminal & Civil	Criminal	Criminal
Civil Liability for Damages	No	No	No	No	Yes	Yes
Temporary Clearance/ Costs	Yes	Yes	Yes	Yes	Yes	Yes
Mandatory Warning Signs	Yes	Yes	Yes	Yes	Yes	Yes
Exemptions For:						
Highway Vehicles	No	No	No	No	No	No
Agric. Equipment	No	No	No	Yes	No	No
Railroad Activities	Yes	No	Yes	No	No	Yes
Government Emergency Responders	No	No	No	No	No	Yes
Storage or Maintenance of Equipment Near Line Prohibited	Yes	Yes	Yes	Yes	Yes	Yes

Overhead Powerline Safety
Comparative Statutes

<u>Date of Statute/State</u>	1973 <u>S. Dakota</u>	1977 <u>N. Dakota</u>	1980 <u>Arizona</u>	1983 <u>Colorado</u>	1988 <u>Mississippi</u>	1988 <u>Utah</u>
High Voltage Threshold	750 volts	600 volts	600 volts	600 volts	600 volts	600 volts
Distance Threshold	6 feet	10 feet	6 feet	10 feet	10 feet	10 feet
Civil Penalty/Criminal Penalty	Criminal	Civil	Civil	Civil	Civil	Civil
Civil Liability for Damages	Yes	No	Yes	Yes	Yes	Yes
Temporary Clearance/ Costs	Yes	Yes	Yes	Yes	Yes	Yes
Mandatory Warning Signs	Yes	No	No	No	Yes	No
Exemptions For:						
Highway Vehicles	No	Yes	No	Yes	No	No
Agric. Equipment	No	Yes	No	Yes	Yes	No
Railroad Activities	Yes	Yes	No	No	No	No
Government Emergency Responders	No	Yes	No	Yes	No	No
Storage or Maintenance of Equipment Near Line Prohibited	Yes	Yes	Yes	Yes	Yes	Yes

**Overhead Powerline Safety
Comparative Statues**

<u>Date of Statute/State</u>	<u>1989 Oregon</u>	<u>1989 Virginia</u>	<u>1989 Wyoming</u>	<u>1991 Missouri</u>	<u>22 State Summary</u>	<u>Proposed Ks. Legislation.</u>
High Voltage Threshold	600 volts	600 volts	600 volts	600 volts	440 volts-2 600 volts-10 750 volts-10	600 volts
Distance Threshold	10 feet	10 feet	10 feet	10 feet	6 feet-8 10 feet-13 8 feet-1	10 feet
Civil Penalty/Criminal Penalty	Civil	Civil	Neither	Criminal	Civil-8 Criminal-12 Neither-1	Civil
Civil Liability on Damages	Yes	Yes	Yes	Rebuttable Presumption	Yes - 13 No - 9	Rebuttable Presumption
Temporary Clearance/ Costs	Yes	Yes	Yes	Yes	Yes - 21 No - 1	Yes
Mandatory Warning Signs	No	Yes	No	No	Yes - 15 No - 7	Yes
Exemptions For:						
Highway Vehicles	No	Yes	No	No	Y-4 N-18	Yes
Agric. Equipment	No	No	Yes	No	Y-5 N-17	Yes
Railroad Activites	No	Yes	No	No	Y-12 N-10	Yes
Government Emergency Responders	Yes	No	No	Yes	Y-5 N-17	Yes
Storage or Maintenance of Equipment Near Line Prohibited	Yes	Yes	Yes	Yes	Yes - 22	Yes

**TESTIMONY
OF
WHITNEY DAMRON
OF
PETE MCGILL & ASSOCIATES
ON BEHALF OF
KANSAS CITY POWER & LIGHT COMPANY
PRESENTED BEFORE
THE HOUSE
JUDICIARY
COMMITTEE**

February 11, 1993

RE: HB 2410

Good afternoon, Chairman O'Neal and the members of the House Judiciary Committee, I am Whitney Damron of Pete McGill & Associates appearing before you today on behalf of the Kansas City Power & Light Company in regards to HB 2410, the Overhead Power Line Accident Prevention Act.

KCP&L is supportive of this bill but would suggest two amendments in Section 4 (b) on page two of the bill, as follows:

Page Two, Section 4 (b), on Line 25,

after "tors.", add a new sentence:

"A public utility shall not be required to provide such temporary clearances or other safety precautions until payment of the estimated cost has been made."

In that same section, on Line 31,

change *"three"* to *"seven"* and delete *"such notification has been made in accordance with subsection (a) of section 4."* and replace that language with *"payment has been made."*

Rationale Supporting Proposed Amendments to HB 2410

Section 4 (b) as it now reads requires a utility to commence relocation or other needed activities within three working days after receipt of the request. There is no provision requiring the requesting party to pay anything before the utility is required to perform the work requested. Accordingly, it is predictable that persons will request locations knowing they are entitled to them under the law and that under the law they do not have to pay in order to get them. After the utility has been compelled by law to do the work, they have all of the burden of trying to collect for their expenses incurred.

At a minimum, the utility should not be compelled to perform such work without payment and be placed in a position of effectively extending credit and having to collect after the fact.

In regards to the proposed amendment changing the time element from three days to seven days, we first are concerned that the days begin upon receipt of a request. That is very short notice. Secondly, we point out that the State of Missouri enacted a similar law in 1991 which provides for seven days, not three (Overhead Power Law Act, Section 319.075, et. seq.). KCP&L delivers electric service in both Missouri and Kansas and its operating personnel often work both sides of the state line. For continuity in service, it would be desirable that both laws are the same.

OVERHEAD POWER LINE SAFETY

319.075. Citation of law

Sections 319.075 to 319.090 may be cited and shall be known as the "Overhead Power Line Safety Act".

(L.1991, S.B. Nos. 214 & 254, § 1 (§ 1))

319.078. Definitions

As used in sections 319.075 to 319.090, the following terms mean:

(1) "Authorized person":

(a) An employee of a public utility or an employee of a contractor which has been authorized by a public utility to perform construction, operation or maintenance on or near the poles or structures of such utility;

(b) An employee of a cable television or communication services company or an employee of a contractor authorized to make cable television or communication service attachments; or

(c) An employee of the state or a county or municipality which has authorized circuit construction, operation or maintenance on or near the poles or structures of a public utility;

(2) "High voltage", electric potential in excess of six hundred volts measured between conductors or between a conductor and the ground;

(3) "Overhead lines", all electrical conductors installed above ground;

(4) "Person", an individual, firm, joint venture, partnership, corporation, association, municipality, or governmental unit which performs or contracts to perform any function or activity upon any land, building, highway or other premises in proximity to an overhead line;

(5) "Public utility" includes those entities defined as such in section 386.020, RSMo, as well as municipally owned electrical systems and electric cooperatives provided for in chapters 91 and 394, RSMo.

(L1991, S.B. Nos. 214 & 254, § A(§ 2).)

319.080. Activities within ten feet of power lines prohibited, exceptions

Unless danger against contact with high voltage overhead lines has been guarded against as provided by section 319.083, no person, individually or through an agent or employee, shall store, operate, erect, maintain, move or transport any tools, machinery, equipment, supplies or materials or any other device that conducts electricity, within ten feet of any high voltage overhead line, or perform or require any other person to perform any function or activity upon any land, building, highway or other premises, if at any time during the performance thereof it could reasonably be expected that the person performing the function or activity could move or be placed within ten feet of any high voltage overhead line.

(L1991, S.B. Nos. 214 & 254, § A(§ 3).)

319.083. Special devices and precautions required—costs

1. When any person desires to temporarily carry out any function or activity in closer proximity to any high voltage overhead line than is permitted by sections 319.075 to 319.090, the person or persons responsible for the function or activity shall notify the public utility which owns or operates the high voltage overhead line of the function or activity, and shall make appropriate arrangements with the public utility for temporary mechanical barriers, temporary deenergization and grounding of the conductors, temporary rerouting of electric current or temporary relocating of the conductors, before proceeding with any function or activity which would impair the clearances required by sections 319.075 to 319.090.

2. A person requesting a public utility to provide temporary clearances or other safety precautions shall be responsible for payment of those costs incurred by such utility in the temporary rerouting of electric current or the temporary relocating of the conductors. Upon request, a public utility shall provide a written cost estimate for the work needed to provide temporary clearances or other safety precautions. A public utility is not required to provide such clearances or other safety precautions until payment of the estimated amount has been made. Unless otherwise agreed to, a public utility shall commence work on such clearances or other safety precautions within seven working days after payment has been made.

(L1991, S.B. Nos. 214 & 254, § A(§ 4).)

319.085. Presumption of negligence, when rebuttable

If a violation of any of the provisions of sections 319.075 to 319.090 results in physical or electrical contact with any high voltage overhead line such violation shall be a rebuttable presumption of negligence on the part of the violator in the event such violation shall cause injury, loss or damage, and, notwithstanding any other law to the contrary, the public utility shall have the right of contribution against any such violator. In addition to any penalties provided herein, liability under common law may apply.

(L1991, S.B. Nos. 214 & 254, § A(§ 5).)

319.088. Exemptions from law

Sections 319.075 to 319.090 shall not apply to:

319.088

PUBLIC SAFETY AND MORALS

(1) Construction, operation or maintenance of power lines and telecommunications lines or authorized attachments thereto by an authorized person as defined in section 319.078; or

(2) Governmental entities responding to an emergency situation.

(L1991, S.B. Nos. 214 & 254, § 4(§ 6).)

319.090. Violations. penalty

Any person who violates any of the provisions of sections 319.075 to 319.088 this act is guilty of a class B misdemeanor.

(L1991, S.B. Nos. 214 & 254, § 4(§ 7).)



"Service to County Government"

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Executive Director
John T. Torbert, CAE

TO: House Judiciary Committee
Chairman Mike O'Neal

FROM: Anne Smith
Director of Legislation

DATE: February 11, 1993

RE: HB 2410

The Kansas Association of Counties has some concerns with HB 2410.

The first concern is with Section 4b of the bill. It does not appear to be the best public policy to require governmental units to pay the costs associated with safety precautions taken by the utility company. It is interesting that the utilities want to require acts of safety and then make everyone else pay for the act. Good public policy should require instead the utility company to make their utility service safe at no cost to the consumer.

Section 7 of the bill includes some exemptions to the bill. For counties the exemption for highway vehicles would apply. However, it is not clear that the term highway vehicles includes all maintenance vehicles, i.e. road graders, high loaders, etc. The KAC would like the term clarified to include all county vehicles and equipment.

Thank you for your consideration of our concerns.

HOUSE JUDICIARY
Attachment #17
02-11-93



KANSAS TRIAL LAWYERS ASSOCIATION

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TESTIMONY BEFORE THE HOUSE JUDICIARY COMMITTEE

BY: William J. Pauzauskie
Kansas Trial Lawyers Association
February 11, 1993

Re: House Bill 2410
The Overhead Powerline Accident Prevention Act

Mr. Chairman and Members of the Committee:

I. INTRODUCTION

I appear in opposition to some portions of House Bill No. 2410. KTLA is in agreement with the utility and contractors that safety in the work-place is of primary concern to all Kansans. Industry and OSHA has recognized this and set forth a standard of conduct, including the National Electric Safety Code, formulated by industry to help prevent accidents, injuries and deaths from contact with high-power overhead electric lines and thereby preventing subsequent lawsuits; and OSHA by implementing a 10 foot rule on the employer.

However, after the injury occurs, this organization directly and indirectly represents the interests of three (3) groups in the work place in the litigation that follows. Firstly, we represent the interests of the injured party, and the family. Secondly, we represent the subrogation interests of the workman's compensation insurance carrier for the injured workmen. We attempt to reduce the liability in workman's compensation costs to the employer by recovery of money, pursuant to the statutory lien of the workman's

compensation insurance carriers. Thirdly we indirectly save monies for the citizens for the State of Kansas. If sufficient monies are collected for permanent injuries, the State's social care system has correspondingly reduced costs for the health, education and medical care of the injured party and his family.

Accordingly, at various times we will represent the interests of the contractors when the utility has made an error, or the interests of the utility when their injured workmen needs to recover for the negligence of others.

I ask the committee to look at the bill not only as a safety bill, but to insure a level playing field which will allow the injured person and his family to receive just compensation for their injuries, and protect the interests of both the contractor and the public utility and State of Kansas. In my opinion, this bill does not meet that goal, and I would like to point out some specific examples of why it does not meet that goal.

II. SECTION 6(b) IS ONE-SIDED AND UNFAIR

The burden on the utility is just to show competent evidence that a violation occurred, for which they receive a "rebuttal presumption of negligence" on the part of the violator.

If you analogize that situation to operating motor vehicles, the evidence is generally, "I had the green light" by the driver of car #1, and the testimony of driver of car #2

is, "No, I had the green light."

Juries sort out who is telling the truth and who isn't telling the truth.

The way Section 6(b) is written, it allows the utility to present any competent evidence, and then receive a favorable jury instruction from the Court. However, if a lawsuit is brought, and it is more likely that the plaintiff will allege a NESC violation on behalf of the utility, then the Court will be faced with two sets of "competent evidence". In that situation, who receives the "rebuttable presumption?"

III. SECTION 6(b) AND (c) ALSO CREATES AN INHERENT DUALITY.

The injured party or the contractor will generally present evidence that the provisions of the National Electric Safety Code were not met by the utility, and the failure to meet the minimum standard, created an unreasonable risk which caused or contributed to plaintiff's injuries. Section 6(c)(2), states, the Act is not intended to limit or modify the provisions of the National Electric Safety Code which are otherwise applicable.

Yet the legislature by passing this Act, can create a "rebuttable presumption" in Section 6(b), the necessity of notice if it is "reasonably foreseeable that the person performing the function or activity could move or be placed within 10 feet of any high voltage overhead line (see Section 3)."

So a person carrying a 26 ft. ladder has to give notice

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to the utility if he is within 36 ft. of the overhead power line. The overhead power line is perhaps 20 to 40 feet off the ground. It appears to me a contractor may have to violate the Act to find the distances to comply with the Act, or give notice on every project.

If passed in its present form, the Act may create more litigation and defense costs, then it is intended to save.

IV. WORKMEN'S COMPENSATION EFFECTS.

If the legislature enacts "rebuttable presumption" language that reduces the recovery of the workmen's compensation carrier, the costs of workman's compensation premiums will not be decreased.

V. SUGGESTED CHANGES

To resolve the problems set forth above we respectfully suggest that:

1. Section 6(b) be deleted.
2. Section 3 be amended to comply with OSHA standards and/or the standards of the national electric safety code.
3. The bill be tabled until the cost benefit effects on the workmen's compensation system is reviewed and analyzed.

Thank you for the opportunity to comment on this bill, and your attention during my comments. I will be happy to answer any questions that any of the members may have.