

Approved: 4/1/03
Date

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES

The meeting was called to order by Chairperson Ben Vidrickson at 9:00 a.m. on March 15, 1993 in Room 254-E of the Capitol.

All members were present except:

Committee staff present: Hank Avila, Legislative Research Department
Ben Barrett, Legislative Research Department
Bruce Kinzie, Revisor of Statutes
Martha Ozias, Committee Secretary

Conferees appearing before the committee:

Ed Schaub, Western Resources, Inc.
Bill Paulzauskie, Kansas Trial Lawyers
Robert Fox, General Counsel, Kansas Corporation Commission
Whitney Damron, Pete McGill & Associates, Kansas Coalition for
Vehicle Choice
Charles Belt, Kansas Highway Users
Norm Sherbert, General Motor Corporation
Glenn Smith, Chief, Natural Gas Operations and Rates, KCC
Burke Bayer, Manhattan, Kansas Land Improvement Contractors and
Home Builders Association of Kansas
Dawn Nonhof, General Manager, Kansas One-Call System, Inc.
Larissa Johns, Director, Customer & Support Services
Eva Powers, MCI Telecommunications Corporation

Others attending: See attached list

The chairman opened hearings on **HB 2410** concerning the enacting of the overhead power line accident prevention act. Ed Schaub spoke in support of this bill saying it would help prevent accidents, injuries, deaths and lawsuits. This bill is designed to put the burden on an employer or contractor to notify the company when they are going to be working around a high voltage line and make people responsible for their own actions. (See Attachment A)

Bill Paulzauskie spoke in opposition to this bill requesting that the committee 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 the state. (See Attachment B)

Testimony was also distributed, but not read, from Whitney Damron on behalf of The Kansas City Power & Light Company. (See Attachment BB)

The committee then heard testimony on **HB 2413** regarding public utilities and voidable issuances. Robert Fox spoke in support of this as amended by the House Judiciary Committee. He explained that by amending the term "void" with the term "voidable by the commission" would allow the Kansas Corporation Commission to revisit issuances that failed to satisfy terms in the statute. (See Attachment C)

Attention was turned to **SCR 1615** relating to government mandated fuel economy standards. Whitney Damron addressed the committee and explained that he was in support of increased fuel economy but that other factors including safety, freedom of choice for the consumer, and striking a reasonable balance among public policy goals should be considered. He urged the committee to adopt this resolution and make opinions known to national leaders. (See Attachment D)

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES, Room 254-E Statehouse, at 9:00 a.m. on March 15, 1993.

Charles Belt spoke in support of the bill expressing his concern for reducing vehicle size to attain fuel economies saying studies prove that smaller vehicles lead to increased highway fatalities. (See Attachment E)

Norm Sherbert addressed the committee on this bill explaining that should Congress pass Federal laws imposing CAFE levels at 40 or 45 mpg it would definitely have an impact on the choices of vehicles available to the public resulting in downsizing of cars which would mean more casualties and injuries. In addition, it would put at risk the production of motor vehicles and jobs at Kansas plants. (See Attachment F)

HB 2041 concerning prevention of damage to certain underground utilities facilities was discussed. Glenn Smith spoke in support of this bill urging "one call legislation" for operators of underground facilities and excavators that do not utilize the location service prior to excavation. He summarized the provisions of this bill and asked for a positive endorsement so that this program can be fully implemented. (See Attachment G)

Burke Bayer spoke in opposition of the amendments by the House Judiciary Committee relating to the tolerance zone and removal of the operator's responsibility to maintain the markings of the underground facility location. It was felt that this legislation was unfavorable to the excavator and removed responsibility from the operator. The committee was asked to consider the amendments to remove this inequity. (See Attachment H)

Dawn Nonhof urged support for this bill to protect people saying it would protect the excavator from injury by helping to identify potentially hazardous situations and protect the communities by safeguarding vital services such as 911 and air traffic control as well as other essential services. (See Attachment I)

The committee also heard testimony from Larissa Johns urging support of this legislation to prevent serious injuries and property damage. She pointed out that line repair is expensive and damages are difficult to collect and the costs that are not recovered will be borne by ratepayers. (See Attachment J)

Eva Powers pointed out that this bill had been "over-amended" and recommended a change in Section 2 (d) to clarify the word "Excavator". (See Attachment K)

With time being a factor and several people still wishing to address the committee, the chairman announced that hearings on **HB 2041** would continue tomorrow. He then adjourned the meeting.

The next meeting is scheduled for March 16, 1993.

GUEST LIST

SENATE TRANSPORTATION COMMITTEE

DATE: March 15, 1993

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
ED SCHAUB	TOPEKA	WESTERN RESOURCES
JOHN ROSENBERG	TOPEKA	WESTERN RESOURCES
JEFF Southard	TOPEKA	" "
Mike Rees	"	AT&T
Eva Powers	"	MCI
Cameron Bruner	"	KTLA
Bill Pauzuskie		
Mica Fischer	Kingman, KS	Close-up Kansas
Chris Tucker	Kingman, KS.	" "
Vicki Leishenberg	Kingman	" "
Don Schnacke	TOPEKA	KIOGA
Richard W. Jones	Kingman	Close-up KS
Rob Hodges	TOPEKA	KTA
Charles McKinley	TOPEKA	PRR
Gyrisa Jones	Lawrence	La Public Service
John - Kim	TOPEKA	Utilizing & Midwest
Dave Frankel	Lawrence	KTLA - intern
NORMAN R. STERBERT	DENVER, CO.	GENERAL MOTORS CORP.
WHITNEY B. DANKON	TOPEKA, KS	Pete McGill's Associates
Jim Luning	"	WESTERN RESOURCES
Anna Smith	TOPEKA	KS. Assoc. of Counties

GUEST LIST (continued)

DATE: March 15, 1993

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TESTIMONY
TO
SENATE TRANSPORTATION AND UTILITIES COMMITTEE
OVERHEAD POWER LINE ACCIDENT PREVENTION
HOUSE BILL 2410
MARCH 15, 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 seven 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 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 the Act which are already covered by another state law. These include highway vehicles, agricultural equipment, equipment on railroad cars, emergency vehicles, and persons moving buildings. 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 Western Resources 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 line 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 knew 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 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 The Kansas Power and Light Company, 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. In addition, the company printed and distributed warning signs and stickers for employers and contractors to use on their electric equipment and around their work places. 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

	1947 <u>California</u>	1955 <u>Tennessee</u>	1960 <u>Georgia</u>	1963 <u>Arkansas</u>	1963 <u>Oklahoma</u>	1966 <u>New Jersey</u>
<u>Date of Statute/State</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.

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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

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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

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**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

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TOOLS CAN KILL

Keep your tools out of electric power lines. Ladders, conveyors, cranes, anything wet or damp -- **any object touching an electric line can conduct electricity directly to you.** REMEMBER: Just one brief touch can kill you or cause very serious injury.

Simply look up before you lift or move any tool or equipment where there is any electrical wiring. Assume every electrical wire is hot. Stay clear, and be sure your tools and all materials are also clear.

If you need help with electrical wires, contact a qualified electrician, or KG&E. That way you'll be safe. And, your tools won't become killers.



KG&E

A Western Resources Company

THINK SAFETY -- WORK SAFELY

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KANSAS TRIAL LAWYERS ASSOCIATION

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TESTIMONY
of the
KANSAS TRIAL LAWYERS ASSOCIATION
before the
SENATE TRANSPORTATION COMMITTEE
regarding
HOUSE BILL 2410
MARCH 15, 1993

KTLA appears in opposition to some portions of House Bill 2410. KTLA is in agreement with the utility and contractors that safety in the workplace 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 powered 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 groups in the workplace 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 workers compensation insurance carrier for the injured person. We attempt to reduce the liability in workers compensation costs to the employer by recovery of money, pursuant to the statutory lien of the workers compensation insurance carriers. Thirdly, we indirectly save monies for the citizens of 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 worker 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 the State of Kansas. This bill does not meet that goal.

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 "rebuttable 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 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"?

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 (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 by passing this Act, the legislature 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 ten feet of any high voltage overhead line (see Section 3)."

So a person carrying a 26 foot ladder has to give notice to the utility if he is within 36 feet of the overhead power line. The overhead power line is perhaps 20 to 40 feet off the ground. It appears that 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 than it is intended to save.

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 the OSHA standards and/or the standards of the National Electric Safety Code.

Thank you for reviewing our testimony on this matter.

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Testimony Submitted to the
Senate Committee on Transportation & Utilities
on
HB 2410
The Overhead Power Line Accident Prevention Act
by
Whitney Damron
of
Pete McGill & Associates
on behalf of
The Kansas City Power & Light Company

Mr. Chairman and Members of the Senate Committee on Transportation & Utilities, on behalf of the Kansas City Power & Light Company, we would like to offer our support to HB 2410, the Overhead Power Line Accident Prevention Act.

In the House Judiciary Committee, we testified in support of HB 2410 and also requested consideration of two amendments. The first amendment, which was accepted by the Committee, increased the number of days a utility had to perform temporary clearances or safety precautions from three to seven. The second amendment, which was not accepted by the Committee, would have required a contractor to prepay a utility for its estimated costs of rerouting service. The contractor would have still been able to appeal any estimate they believed to be too high to an arbitrator. KCP&L simply does not desire to become a collection agency if payment is not made. We would note that both of these amendments are consistent with the Missouri Overhead Power Line Act which was passed in 1991.

We will not request that our second amendment be included with HB 2410. Instead we will see how the bill works if it is adopted by the 1993 legislature and perhaps return in a subsequent year if our history demonstrates a problem in this area.

Although we do not believe HB 2410 is perfect, we do support it as a step in the right direction. Thank you for your attention to our written remarks.

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Senate Transportation and Utilities Committee
March 15, 1993

Testimony of
Robert Fox, Deputy General Counsel
Kansas Corporation Commission

HOUSE BILL 2413

Mr. Chairman and members of the committee, the Kansas Corporation Commission appreciates the opportunity to testify before the Senate Transportation and Utilities committee in support of HB 2413 as amended by the House Judiciary committee.

K.S.A. 66-125 sets out when a public utility or common carrier must obtain a certificate from the commission for the issuance of stocks, certificates, bonds, notes or other evidences of indebtedness. As the statute presently reads, the Commission has no authority to revisit its own actions or those of utilities. Any issuance of an evidence of indebtedness that does not comply with the very strict terms of K.S.A. 66-125 is void.

The Commission believes amending the term "void" with the term "voidable by the commission" would allow the Commission to revisit issuances that failed to satisfy terms in the statute. The Commission has a strong interest in seeing that indebtedness transactions are reasonable, but technical compliance with the statute as it presently reads is almost impossible given present market conditions.

There is no fiscal impact on the KCC or any other state agency with the passage HB 2413.

The Corporation Commission respectfully asks for your favorable consideration and support for House Bill 2413.

Testimony Presented to the
Senate Committee on Transportation & Utilities
on
SCR 1615
by
Whitney Damron
of
Pete McGill & Associates
on behalf of
Kansas Coalition for Vehicle Choice

Good morning Chairman Vidrickson and members of the Senate Transportation & Utilities Committee. On behalf of Coalition for Vehicle Choice, I wish to thank you for the opportunity to appear here before you today in support of Senate Concurrent Resolution 1615.

CVC is a coalition representing more than 3,000 automotive, insurance, and other business, farm, recreation, consumer and safety organizations concerned about the impact of congressional proposals that would substantially increase Corporate Average Fuel Economy Standards (CAFE).

CVC/Kansas is the local arm of CVC and has over seventy members representing hundreds of thousands of Kansans. Included with my testimony is a listing of our Kansas membership as well as an abbreviated listing of our national members. Quite simply, CVC supports increased fuel economy. However we believe that other factors should be considered when setting CAFE standards, such as:

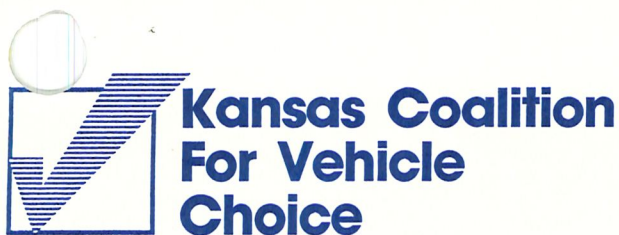
- Safety;
- Freedom of choice for the consumer; and,
- Striking a reasonable balance among public policy goals such as fuel economy, safety and environmental quality.

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We would urge the Committee to adopt SCR 1615 and make your opinions known to our national leaders. We believe the timing for this resolution is right since Congress and President Clinton are debating national energy issues at this time.

On behalf of CVC/Kansas, I thank you for this time to appear in support of SCR 1615 and would be pleased to stand for questions.

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PETE MCGILL & ASSOCIATES, Inc.

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KANSAS MEMBERSHIP

As of March 15, 1993

AAA Kansas
A Total Image
ABZ Manufacturing, Inc.
Acme Foundry, Inc.
Alliance Insurance Companies
Apico Corporation of Girard
Aristocrat Motor Company, Inc.
Baker Roofing Co., Inc.
Bayer Construction Co., Inc.
Capital Limo
Cellular One of Topeka
Chanute Bank of Commerce
Community Paging
Joe Conroy Construction, Inc.
Corvette Clubs of Kansas City
Catalytic Industrial Group
City of Pittsburg, Ks.
Darrell's Texaco Service
Dustrol, Inc.
Garden City Area Chamber of Commerce
Gerlach Builders
Greater Topeka Chamber of Commerce
Griggs Construction
The Heavy Constructors Association of the Greater K.C. Area
Highway Users Federation for Safety & Mobility
Hutchinson, Kansas Police Department
James Lincoln-Mercury GMC, Inc.
K.C. Bobcat, Inc.
Kansas Association of Wheat Growers
Kansas Chamber of Commerce & Industry
Kansas City Kansas Area Chamber of Commerce
Kansas Farm Bureau
Kansans for Highway Safety
Kansas B.A.S.S. Chapter Federation, Inc.
Kansas Hearing Aid Association, Inc.
Kansas Highway Users Federation

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The Land Company
Kansas Lawn & Garden, Inc.
Kansas Skeet Shooting Association
Kansas Motor Car Dealers Association
Kansas Motor Carriers Association
Kansas Railroad Association
Larry Devine
Lewis Auto Salvage
Life and Safety Products, Inc.
Martin K. Eby Construction Co., Inc.
McDonalds of Hutchinson
Mid-West Line Contractors
Mr. Goodcent's Subs & Pasta of Topeka
Northside Boats
Patio Pool & Fireside
Quail Unlimited, Inc.
Reno Construction, Co.
Ruben's Rod & Reel
Ruddick's Inc.
Sayers Ace Hardware, Inc.
Shearpoint Hairstylers
Speier Coachworks
Stan Boos Auto Sales, Inc.
St. Francis Area Chamber of Commerce
Steinlage & Associates
Stella's Design & Alteration
Sunglo Feeds
Tilden Corporation
Topeka Harley-Davidson
Universal Companies, Inc.
Utility Contractors, Inc.
Venture Capital
Victory Housing, Inc.
Village Cleaners
Westridge Automatic Car Wash
Wilcox Homes & RV Center, Inc.
Works, Works & Works, P.A.



Coalition For Vehicle Choice

CVC MEMBER ORGANIZATIONS—National Members

December 31, 1992

American Legislative Exchange Council	ITT Corporation
Allied-Signal Automotive	Independent Electrical Contractors, Incorporated
American Automotive Leasing Association	International Drivers' & Enthusiasts' Auto League
American Car Rental Association	International Snowmobile Industry Association
American Coalition for Traffic Safety	International Federation of Steeplechase Sports
American Driver and Traffic Safety Association	International Professional Roddeo Association
American Farm Bureau Federation	The Irrigation Association
American Federation of Small Business	LTV Steel Company
American Goat Society, Incorporated	Limousine Industry Manufacturers Organization
American Horse Council	Livestock Marketing Association
American International Automobile Dealers Association	Marine Remilers Association of America
American Iron and Steel Institute	Mechanical Contractors Association of America, Incorporated
American Meat Institute	Michelin North America, Incorporated
American Miniature Horse Association	Motor Vehicle Conversion Association
American Motorcyclist Association	Motor Vehicle Manufacturers Association
American Recovery Association, Incorporated	Motorcycle Industry Council
American Recreation Coalition	Motorola, Incorporated
American Red Brangus Association	The Mustang Club of America, Incorporated
American Road and Transportation Builders Association	National Alliance of Senior Citizens, Incorporated
American Soybean Association	National Association of Manufacturers
Armco	National Auto Auction Association
Arvin Industries, Incorporated	National Auto Dealers Association
Associated Builders & Contractors	National Campground Owners Association
Association of American Railroads	National Carriers' Association
Atchison, Topeka & Santa Fe Railway Company	National Concrete Masonry Association
Auto/Steel Partnership Program	National Grange
B.A.S.S., Incorporated	National Highway 50 Federation
BOAT/U.S.	National Motorists Association
Bernlehen Steel Corporation	National Roofing Contractors Association
Bridgestone/Firestone, Incorporated	National Traffic Safety Institute
Chrysler Corporation	National Association of Plumbing-Heating-Cooling Contractors
CSX Corporation	National Association of Professional Insurance Agents
Citizens for a Sound Economy	Norfolk Southern
Coalitions for America	PPG Industries, Incorporated
Competitive Enterprise Institute	Recreation Vehicle Dealers Association
Conrail	Recreation Vehicle Industry Association
Consumer Alert	Reynolds Metals Company
Contract Services Association of America	Rubber Manufacturers Association
Dana Corporation	Santa Gertrudis Breeders International
E.I. du Pont de Nemours	The Seniors Coalition
Eaton Corporation	Southern Pacific Transportation, Incorporated
Emergency Nurses CARE, Inc.	TRW, Incorporated
Ford Motor Company	Tire Industry Safety Council
General Motors Corporation	Traffic Safety Now
The Good Sam Club	USX Corporation
Goodyear Tire and Rubber Company	Union Pacific Corporation
Highway Users Federation for Safety and Mobility	United States Chamber of Commerce
International Association of Chiefs of Police	United Technologies Corporation
Highway Safety Committee	

Total State & Local Members: 5213

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TESTIMONY

Before The

Senate Transportation & Utilities Committee

Monday, March 15, 1993

Mr Chairman, members of the committee, my name is Charles Belt and I appear before you today in support of Senate Concurrent Resolution 1615--representing the individuals and organizations of the Kansas Highway Users Conference.

My remarks will be very brief because I could not possibly articulate our position concerning increased CAFE standards and the negative impact they would have on the citizens of Kansas any better than expressed in SCR 1615.

The Kansas Highway Users Conference has been previously and continues to be on record opposing Congressional efforts to mandate unrealistic 40% plus CAFE increases on automobiles and light trucks. The economic impact on the people of Kansas is certainly of concern, but of greater concern are proposals for reducing vehicle size to attain fuel economies--which studies prove lead to increased highway fatalities. I have attached copies of correspondence sent to the Kansas Congressional Delegation and Administrator, NHTSA, concerning CAFE for your information.

The KHUC wholeheartedly supports and commends the committee for proposing SCR 1615! Thank you. ATTACHMENT E

3/15/93

KANSAS

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ASSOCIATION
TOPEKA

April 28, 1992

The Honorable Dan Glickman
U.S. House of Representatives
1212 Longworth House Office Building
Washington, D.C. 20515

Dear Congressman Glickman:


Highway users in Kansas are concerned over the introduction of H.R. 4750 on April 2, 1992, that is cited as the "Global Climate Protection Act," with Congressman Henry Waxman of California as the primary sponsor and you, Congressman Glickman, as one of the co-sponsors.

We view that this bill will lead to unrealistic Corporate Average Fuel Economy (CAFE) standards for America's automobiles and light trucks. We feel that the only way to meet your bill's carbon dioxide (CO 2) standards would be to mandate CAFE standards.

A recent release from the National Research Council cautioned that technically achievable levels of fuel economy may not be practical from a societal standpoint. To set practical miles-per-gallon (mpg) standards for new vehicles, the NRC report says policy makers must balance the benefits of improved fuel economy with potential costs -- considering effects on traffic safety, consumers, vehicle manufacturers, dealers, labor and the U.S. economy as a whole.

Motorists in Kansas will face substantial costs and fewer choices in vehicles if unrealistic CAFE standards are imposed by the U.S. Congress. There also will be an adverse effect on traffic safety.

Sincerely,


James O. Foster
Chairman

cc: Kansas Congressional Delegation
Kansas HUC Executive Committee

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KANSAS

HIGHWAY USERS CONFERENCE

December 29, 1992

The Honorable Marion Blakey
Administrator
National Highway Traffic Safety Administration
400 7th Street SW
Washington, DC 20590

Attn: Docket No. E-88-01; Notice 5

Dear Administrator Blakey:

The Kansas Highway Users Conference respectfully wishes to introduce this letter as part of the record regarding the Request for Comment notice published October 28, 1992, in the Federal Register, with specific attention to question four.

We strongly support and urge that safety considerations for the motoring public be the primary concern in considering future fuel economy standards for motor vehicles. As the NHTSA's own studies show, proposals for reducing vehicle size to attain increased fuel economies is counter-productive and leads to increased highway fatalities.

By its very name, the NHTSA should ensure that safety is the primary consideration in setting CAFE standards.

Thank you for the opportunity to comment on this most important matter.

Sincerely,



Charles D. Belt
Chairman

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GENERAL MOTORS CORPORATION

Statement on Kansas SCR 1615 dealing with "Corporate Average Fuel Economy" (CAFE)

by Norman R. Sherbert

March 15, 1993

before the
Senate Transportation and Utilities Committee

General Motors supports the passage of SCR 1615 and also supports the efforts of the Kansas Coalition for Vehicle Choice (KCVC).

When the Federal Congress first proposed increasing the Corporate Average Fuel Economy, (CAFE - the average fuel economy of all vehicles manufactured and sold by a single manufacturer), several years ago from 27.5 miles per gallon (mpg) the issue was global warming. But, as soon as war broke out in the Middle East, the issue became independence from foreign oil. While both of these issues are very important, even at this time neither issue can be proven to be single issue directed at the fuel economy of motor vehicles. In other words this subject has been framed only as a political issue. In fact levels of CAFE have been proposed from 40, to 45, to 50 mpg - - - all very unrealistic!

Of particular interest to you as Kansas legislators, are the implications upon the state and the potential impact on jobs, employment, and the availability of vehicles that Kansans want to buy. If Congress should pass Federal laws imposing CAFE levels at 40 or 45 mpg it would definitely have an impact on the choices of vehicles available to the public. GM, and the industry in general, has expended the technology in form of computer control/catalytic converter systems to obtain the least amount of emissions, the best vehicle performance, and the most fuel economy. Any great deviation from 27.5 mpg will necessitate downsizing of cars. This would definitely effect the buying habits of the public - - even to the point of holding on to their more polluting, less fuel efficient vehicles. In addition when smaller vehicles collide with larger vehicles, the law of physics prevails and the smaller car "loses" (meaning more casualties and injuries).

In addition, the GM Fairfax Plant in Kansas City, Kansas presently produces the Pontiac Grand Prix. In the 1995/96 time frame another product in addition to the Grand Prix is scheduled for production at that plant. Neither product would specifically be able to comply with a CAFE level of much over 28 mpg. Therefore, any level of CAFE approaching 40 mpg would put production of motor vehicles and jobs at the Fairfax Plant "at risk."

The state of Kansas and Kansans will be affected if Congress pursues past trends in this area. That is why it is so important for this Legislature to take an active role and let our Congressional Delegation know of your feelings and opinions on the matter.

ATTACHMENT F

3/15/93

** TOTAL PAGE.002 **

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Let consumers decide America's vehicle future

Who should determine what type of vehicle will be available to the American consumer? Should we allow consumers to decide which vehicles best meet their individual needs? Or should we force automakers to build vehicles the public doesn't want?

Judging from an editorial, "Automakers should stop building the big gas-guzzlers," The News Journal prefers the latter option. But I think most Delawareans would disagree.

Today's cars are hardly "gas-guzzlers." In fact, the fuel economy of new cars has doubled over the last 20 years, a remarkable accomplishment.

Delawareans depend on cars and trucks for commuting, personal travel and recreation, as work vehicles and for providing jobs. Whatever your particular automotive concern or need — size, safety, fuel economy, comfort, seating capacity, luggage space, payload or towing capability — there are models available today to meet those demands. The highly competitive auto market, with three domestic and over a dozen foreign-based manufacturers, helps to ensure that consumer demands are met — and that models that don't meet customers' needs are weeded out.

The News Journal editorial recommended that American automakers should build more small cars, while acknowledging the lack of consumer demand. In fact, while there are plenty of small, high-mileage subcompacts available — several rated at 40 mpg or higher — those vehicles account for less than 2

W. Laird Stabler III is a Wilmington attorney and serves as Delaware coordinator of Coalition for Vehicle Choice.

DELAWARE VOICE



**W. LAIRD
STABLER III**

percent of new-car sales because most consumers want greater size, comfort, safety and performance. Consumer demand has led Japanese automakers to offer more mid-size and luxury models.

Why, then, should we encourage more production of vehicles that most consumers don't want? To help consumers? Clearly not. To help domestic industry and employment? Of course not. The U.S. auto industry has undergone painful readjustments as it moved to improve quality and introduce new models that meet world-class standards. To ignore consumer demand would harm our industry's competitiveness and represent surrender to foreign competitors.

The News Journal also suggested that smaller cars produce less pollution and are needed to reduce our reliance on foreign oil. Catchy slogans, but they're not supported by the facts.

Car size and fuel economy have little or no effect on harmful tailpipe emissions which are regulated on the basis of miles traveled, not miles per gallon. Thus, full-size sedans must meet the same strict emission stan-

dards as subcompacts. That was confirmed last year by the National Academy of Sciences.

And what about energy independence? Our oil imports are determined by world oil prices, not by U.S. car fuel economy. Just look at the record: Over the past 20 years, cars were downsized and fuel economy doubled, but U.S. oil imports nonetheless increased, because world oil prices have been low.

One other point deserves mention — safety. Contrary to what was said in another News Journal editorial, the continuing drop in the highway death rate is not an indication that the increase in smaller, more fuel-efficient vehicles is having no safety impact on our highways. It's clear that smaller cars generally offer less safety protection than larger ones. That's not only common sense but has been proved by expert safety researchers.

While safety on our highways has improved over the past 10 years, the progress would have been even greater if vehicles hadn't been downsized to improve fuel economy in the late 1970s. In 1991, the administrator of the National Highway Traffic Safety Administration issued a study showing that "2,000 fatalities and 20,000 serious injuries occur annually as a result of the downsizing of the passenger car fleet during that period [the 1970s and 1980s]."

When it comes to figuring out what kinds of vehicles to build for America's future, the auto industry would be well advised to listen to American motorists, and not to well-meaning but misguided suggestions from those who would like to limit consumer's ability to acquire vehicles which meet their needs.

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SHARON KAUK was driving her Honda Civic along a winding stretch of California Highway 152. Her husband, Tim, was beside her, and their two-month-old son, Matthew, was belted in his car seat. As Sharon steered around a curve, a Lincoln Town Car coming from the opposite direction crossed the double line and slammed head-on into the Honda. Although Sharon was wearing a seat belt, she was killed instantly. Tim and Matthew were seriously injured. The passengers in the Lincoln suffered only minor injuries, even though they were not wearing seat belts.

Since that tragic afternoon in January 1990, one thought keeps passing through Tim Kauk's mind:

"Had we been driving a larger car, Sharon's life might have been saved."

Earl M. Sweeney, chairman of the Highway Safety Advisory Committee for the International Association of Chiefs of Police, has seen numerous accidents like this one. "The fact is, people in smaller, lighter vehicles always get the worst of it in collisions with larger vehicles," he says.

For almost two decades, however, the federal government has been trying to force Americans into smaller cars. The fatal trade-off—higher gas mileage at the expense of size and safety—began in 1975, when Congress enacted the Corporate Average Fuel Economy (CAFE) law to solve the

"energy crisis" during the Arab oil embargo. The law requires automakers to produce car fleets averaging 27.5 miles per gallon. If a fleet fails to meet that average, the carmaker is fined \$50 for every mile per gallon under the standard, times the total number of cars in the fleet.

Forcing ever-smaller automobiles on the American public will exact a terrible price

This Law Might Kill You

BY DANIEL R. LEVINE

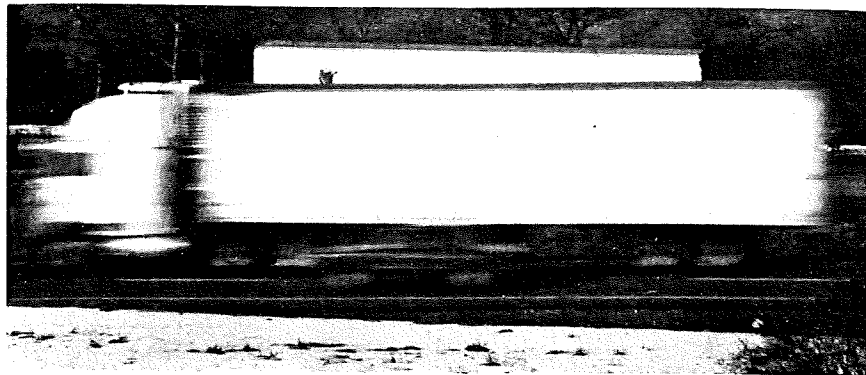
The result: carmakers have been forced to raise the prices of big cars—the cars many Americans want—to entice consumers into smaller, lower-priced models. Under CAFE, large families, or people who simply enjoy the comfort and safety of a spacious car, are penalized for their choice.

Now some members of Congress are asking for even stricter standards. Legislation introduced by Sen. Richard H. Bryan (D., Nev.) would require automakers to produce car fleets averaging over 34 m.p.g. by 1996 and about 40 m.p.g. by 2001. "This bill will save 2.5 million barrels of oil a day," Bryan promises.

Bryan's plan, which former Transportation Secretary Samuel Skinner called the "Highway Fatality Bill," was narrowly defeated two years ago. But Bryan continues to press for tougher fuel standards. He is not alone. Bill Clinton's economic manifesto, *Putting People First*, calls for

of the crash and be crushed more quickly than a big auto, putting the occupants at greater risk.

A 1989 study by economist Robert Crandall of the Brookings Institution and John Graham of the Harvard School of Public Health found that the 27.5-m.p.g. standard is esti-



increasing the CAFE standard to 45 m.p.g. by 2015.

Speaking for many, Sen. Don Nickles (R., Okla.) says tougher standards would be a mistake. "A dramatic increase in CAFE standards would reduce consumer choice and increase highway fatalities," Nickles says. "It's an inherently flawed approach that has been proven to do more harm than good."

Here's why increasing the CAFE standards is a bad idea:

More small cars mean more fatalities. When a 4000-pound Lincoln and 2275-pound Honda collide, pure physics takes over. A small car will provide less resistance to the energy

mated to be responsible for 2200 to 3900 additional deaths and up to 20,000 serious injuries over the ten-year lifetime of 1989-model cars. From this study Graham went on to estimate that increasing the standards to those in Bryan's bill could add 1650 fatalities and 8500 serious injuries to the annual toll.

The National Highway Traffic Safety Administration (NHTSA), which administers CAFE, has confirmed that small cars are more dangerous than large ones, but claimed the 27.5-m.p.g. standard doesn't affect safety. This led the Competitive Enterprise Institute and Consumer Alert, two public-policy groups, to

file a lawsuit charging NHTSA with ignoring CAFE's dangers. In February 1992, the U.S. Court of Appeals agreed and said NHTSA had "fudged the analysis" and "obscured the safety problem." The court ordered NHTSA to conduct "a serious analysis of the [CAFE] data and decide whether the associated fuel savings are worth the lives lost."

When the Insurance Institute for Highway Safety examined occupant death rates for 11 General Motors models reduced in size between the 1977 and 1986 model years, the institute found that in ten of the cars, more people died after downsizing. The cars that were not downsized showed no such increase in fatalities. The institute concluded that "downsizing cars means more deaths."

Ralph Nader and his various public-interest groups have been in the forefront of the effort to increase CAFE. These advocates maintain that today's small cars can be made just as safe as large ones through the use of air bags and other safety devices. Yet in 1989, a reporter interviewing Nader asked if he were to buy a car, what size would it be? "Well, larger cars are safer—there's more bulk to protect the occupant," he answered.

Joan Claybrook heads the Nader group Public Citizen. She was also in charge of NHTSA during the Carter Administration. Claybrook is an outspoken advocate of higher CAFE standards. But in 1980, as head of NHTSA, she released a report that concluded: "The growing shift to smaller cars will increase the num-

READER'S DIGEST

ber of deaths and injuries." That same year NHTSA published *The Car Book: A Consumer's Guide to Car Buying*, which concluded: "Next to wearing your safety belt, a car's weight is one of the most important factors affecting your safety. Of the automobiles currently on the road, a 4000-pound car is twice as safe as a 2000-pound car."

Why the discrepancy? Former NHTSA administrator Diane Steed, who now heads an anti-CAFE group called the Coalition for Vehicle Choice, suggests the answer: "These groups make their living by making American industry the villain—even when industry is right. The day they agree with industry is the day they go out of business. Unfortunately, the interests of American consumers, whom they supposedly represent, are forgotten."

Prices would go up. The average price of a new car has risen from \$4950 in 1975 to \$16,700 today. Carmakers have already been forced to use more expensive, lightweight materials, reducing the weight of their cars by an average of 1000 pounds, to meet the 27.5-m.p.g. standard. To achieve a 40-m.p.g. standard, manufacturers would require greater use of these materials. Last year, after conducting an authoritative examination of CAFE, the National Research Council of the National Academy of Sciences concluded that higher CAFE standards would drive up the price of new vehicles by as much as \$2750 each.

And since the production of larger,

PHOTO: ERNEST COPPOLINO

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THIS LAW MIGHT KILL YOU

less fuel-efficient cars would be severely cut to comply with CAFE fleet requirements, their prices would rise even higher. This would hurt consumers and American auto manufacturers. It would make big cars unaffordable for many more people and sharply limit U.S. production of mid- and full-sized cars and light trucks, an area in which U.S. manufacturers enjoy a 90-percent market share. "When the government regulates in a way that prices many of its citizens out of access to large-car safety, it owes them responsible candor," wrote Judge Stephen Williams in the February 1992 court decision against NHTSA.

CAFE has failed to accomplish its fuel-conservation goals. It was supposed to reduce U.S. "dependence" on foreign oil and guard against future oil shocks. In fact, U.S. purchase of foreign oil has increased 20 percent since CAFE was enacted. "The present fuel-efficiency law is seriously flawed," the Washington *Post* said in an editorial last year. "If the object is to save gasoline, a higher fuel efficiency standard is the wrong way to go about it."

Higher standards will have little effect on the environment. Even though gas prices, adjusted for inflation, have been at their lowest level in 19 years, the Persian Gulf War brought renewed calls from some Congressmen for a higher fuel-economy standard. They said it was needed not only to reduce dependence on foreign oil, but to significantly reduce so-called "greenhouse gas" emissions.

According to Congress's Office of Technology Assessment, however, American cars and light trucks account for only 1.5 percent of these emissions, meaning that enactment of the Bryan bill would reduce them by less than one-half of one percent.

Technological improvements since the early 1970s have reduced about 80 percent of harmful carbon monoxide and hydrocarbon emissions, while fuel efficiency has more than doubled. These improvements are largely the result of fierce competition among automakers striving to give the consumer what he or she wants.

Higher standards will limit consumer choice. According to a Gallup poll, Americans spend an average of two hours and 24 minutes a day in their cars. Many want to spend that time in large vehicles. Typical is Walter R. Thomas of Kansas City, Mo., who drives a Buick Park Avenue. "I'm willing to pay more for a larger car, and I'm willing to buy more gas for a larger car," he says. "I don't want the government telling me I have to drive a small car."

Bryan's legislation would reduce the number of family-size cars on the market. Even the number of midsize models that Americans have been forced to redefine as "family-size" would taper off. The Honda Accord has been America's best-selling car for three of the past four years. Using available, proven technology, however, today's Accord could not meet the higher mileage standard proposed for 2001. Neither would current models such as the

Acura Integra or Legend, Toyota Camry, Buick LeSabre, Oldsmobile Cutlass or Chevrolet Lumina.

The two-door Geo Metro XFi is one of the few cars on the road today that exceeds Bryan's proposed standard. It gets a remarkable 53 m.p.g. in the city and 58 m.p.g. on the highway, but it weighs only 800 pounds more than a touring motorcycle. "If fuel economy is your main objective, the Geo Metro is a great car," says GM's William H. Noack. "But most of our customers want more luggage space, performance and comfort. CAFE forces automakers to build cars customers don't necessarily want."

The consumers' preference is evidenced by sales figures. In 1991, General Motors sold only 90,000 Metros in the U.S. (two percent of its total U.S. sales), but 217,555 midsize Luminas (\$7990 more expensive than the Metro). Nationwide, subcompact cars that achieve 40 m.p.g. or better account for less than three percent of total new-car sales. Even though most Americans aren't buying smaller cars, auto manufacturers are pressured to build more of them.

THE OPEN SECRET, which seems to elude only Congressmen and fed-

READER'S DIGEST

eral bureaucrats, is that market conditions determine the types of cars people drive. In the late '70s, automakers were producing cars that surpassed the 27.5-m.p.g. CAFE standard—not because of a government mandate, but because gasoline prices were near an all-time high and people wanted fuel-efficient cars. When gas prices dropped, buyers once again demanded larger, more powerful cars.

In its report about CAFE standards, the National Research Council concluded: "Congress and government agencies are attempting to regulate an industry of tremendous importance to the U.S. economy in the absence of sufficient information from neutral sources on which to base such regulation."

Forcing automakers to build vehicles to meet a drastically higher gas-mileage standard would cost us more money, limit our choices and endanger our lives. Just ask Tim Kauk, whose two-month-old son was left without a mother after the head-on collision of their subcompact car: "Every time you go out in a small car, you're putting your family's safety on the line. The sacrifice is not worth it."



This Law Might Kill You

BY DANIEL R. LEVINE

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Senate Committee on Transportation and Utilities

March 15, 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 Transportation and Utilities Committee in support of HB 2041.

Preventing damage to underground facilities is the subject of considerable legislation. Currently about forty (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 (2) 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:

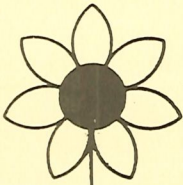
1. Establishment of a notification center.
2. Operators of underground facilities to become members of notification center.
3. Excavators to provide 2 day notice of intent to excavate.

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. Death, injury, or damage occurring as a result of violation of this act, establishes rebuttable presumption of negligence on the part of the violator.
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.

Finally, it is hoped that this damage prevention program will receive positive endorsement from this committee, and the senate, 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 neighbors.



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TO: MEMBERS OF THE SENATE TRANSPORTATION AND UTILITIES COMMITTEE

FROM: Janet Stubbs

DATE: March 16, 1993

RE: TESTIMONY OF BURKE BAYER ON HB 2041
PRESENTED ON BEHALF OF THE
KANSAS LAND IMPROVEMENT CONTRACTORS AND
HOME BUILDERS ASSOCIATION OF KANSAS

I do want to thank the Committee for the opportunity to present oral testimony by Mr. Bayer without supporting written testimony. I was unaware of the hearing by the Transportation Committee until 8:15 A.M. on the day of the hearing. This is an attempt to confirm the position of the above mentioned organizations as expressed by Mr. Bayer and urge your consideration of our concern for the excavators who attempt to follow the current requirements of the voluntary Kansas One Call and operate in a responsible manner.

The above mentioned organizations are opposed to the amendments by the House Judiciary Committee relating to the tolerance zone and removal of the operator's responsibility to maintain the markings of the underground facility location.

First, it is our belief that technology exists today to allow operator's to locate the depth of an underground facility to the degree that would permit the marking both vertically and horizontally. To allow a 24 inch horizontal tolerance zone with no responsibility or liability for the vertical location of a facility is encouraging irresponsible installation of the facility and requiring additional hand digging time and effort by the excavator.

We support the amendment which permits a two day notification on the part of the excavator in non-emergency situations. However, the bill as amended requires that notification must not occur more than 10 days prior to excavation. This provision was in the bill prior to the House amendment which removed responsibility for maintenance of the marking by the operator. As amended, why is there any 10 day provision placed upon the excavator?



ATTACHMENT H

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It appears that 30 minutes after the facility is marked by the operator an excavator could dig into and damage a facility and the operator would be afforded the opportunity to allege that someone must have moved the markings, rather than accept liability due to an error in marking. Who would then be responsible for damage to the facility? Must the excavator go to Court to determine liability or is the Legislature in fact saying they wish to place liability for damages on the excavator? As amended, we believe operators could perpetually avoid liability for errors in marking by alleging tampering with the flags, etc.

We ask that the stricken language on page 2, lines 35 and 36, as well as the language on page 3, lines 38 through 42 be reinstated in the bill. In line 40 on page 3, we request the word "seven" be changed to "eight" for consistency. We also continue to believe that the tolerance zone is larger than necessary for today's technology in locating the underground facility.

It is our position that this legislation is extremely unfavorable to the excavator and removes responsibility from the operator. We urge your consideration of the amendments to remove this inequity.

TRANS.
3/15/93
H-2



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**TESTIMONY ON BEHALF OF KANSAS ONE-CALL SYSTEM, INC.
BEFORE THE 1993 SENATE TRANSPORTATION AND UTILITIES COMMITTEE
DAWN NONHOF
MARCH 15, 1993**

Good morning. 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.

For nearly ten years, I've been involved in the protection of underground facilities through the one-call concept. My experience has taught me that preventing damage to sub-surface utility lines benefits the excavator, the facility owner and, of primary importance, the general public.

Since the beginning of the building boom of the 1970's, America's underground infrastructure has grown in almost geometric progression. Thousands of miles of underground plant have been installed to accommodate the rapid expansion of the cable television industry. Fiber optic facilities revolutionizing long distance voice and data communications have been buried through even the remotest parts of our nation.

9-1-1 service is perhaps the best example of the importance of this underground infrastructure. How often do we hear reports of the amazing rescues effected because someone was able to dial these three digits and reach much needed help nearly immediately? 9-1-1 has been made possible by that invisible, electronic infrastructure. Once thought to be a luxury or convenience, rapid and uninterrupted access to the outside world through a telephone is now essential to modern life. 9-1-1 is but one example of our dependence on the continued provision of all the services carried through a below-ground network of pipes, wires and fiber optic lines.

Any excavator digging without knowledge of the location of the components of this infrastructure puts himself, his crew and the general public at risk. Digging has always been inherently dangerous. Once, that element of risk was limited only to those directly engaged in the excavation process. Now, anyone digging blindly can put an entire community at risk by threatening the continued provision of vital services.

Establishment and use of a one-call center has been called the single best tool to help prevent damage to sub-surface facilities. By placing a single phone call, an excavator puts himself in contact with multiple utility companies throughout the area served by the one-call center. The one-call center obtains the pertinent information from the excavator and forwards it to its utility members. A printed ticket detailing the information obtained from the excavator is delivered to the utility company in a matter of minutes via a teleprinter or FAX machine. Once the message is received, the underground line owner dispatches a technician armed with the latest electronic equipment to the work site. The technician marks the path of the buried facilities with paint or stakes, allowing the excavator to avoid contact with them.

All parties stand to benefit from the passage of this bill. Because it requires all underground line owners of consequence to join the one-call center, the excavator is assured he is reaching all affected parties. The underground line owner can mark all lines prior to excavation, thereby helping prevent costly disruption or damage. The benefits to the consumer are two-fold: repair costs will be kept to a minimum, thus keeping rates low, and the interruption of critical services will be reduced or eliminated. Each of us is familiar with the consequences of the disruption of the underground infrastructure. We all remember the major news reports of the loss of air traffic control resulting from a digging mishap. You may recall stories of entire neighborhoods being evacuated due to a gas leak. Each of us has experienced the frustration caused by the loss of cable television during a news broadcast or a favorite movie. While the entire list of problems caused by damage to sub-surface facilities would take days to enumerate, it is clear that this underground infrastructure must be protected.

In the final analysis, this bill does one very important thing: it protects people. It protects the excavator from injury by helping identify potentially hazardous situations. It also protects our communities and homes by safeguarding the vital services we have come to regard as essential.

Thank you for your time and consideration.

TRANS.
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I-2

Senate Transportation & Utilities Committee
Kansas Legislature
March 15, 1993

Testimony of Larissa Johns
Director, Customer & Support Services
Kansas Public Service

Chairman Vidricksen, Members of the Senate Transportation & Utilities 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.

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. The Kansas One Call System was initiated so excavators could call one number and have all underground lines located. 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.

However, our primary concern is not dollars, but the safety of our customers and the communities we serve. We feel that all excavators, including homeowners, should be required to call for line location markings.

This legislation is intended to prevent serious injuries and/or property damage that may occur when excavators hit underground utility lines. It's a safety issue which applies to homeowners as well as contractors. We don't want to penalize the homeowner digging post holes for a new fence in his back yard, but we do want them to call for line markings. That phone call will prevent an accident. The civil penalties and injunctive relief called for in the legislation are intended for those individuals who knowingly disregard the law.

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

TRANS.
3/15/93
J-2

BEFORE THE SENATE TRANSPORTATION & UTILITIES COMMITTEE
March 15, 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.

Certain amendments were made to this bill in the House. MCI strongly supports most of those amendments.

One amendment was to the definition of "Excavator", Section 2(d) to exempt homeowners from liability when digging in their own back yards. MCI would prefer that homeowners be required to call the notification center since they may easily damage facilities and potentially injure themselves while digging. Nevertheless, MCI supports the bill with that exemption.

Unfortunately, the present definition of "Excavator" excludes more than intended by the House Committee. As the definition presently reads only a homeless excavator would appear to be covered by the bill. MCI recommends that Section 2(d) be amended as follows:

(d) "Excavator" means any person who engages directly in excavation activities within the state of Kansas, but shall not include any occupant of a dwelling who:

- (1) uses such dwelling as a primary residents, and;
- (2) excavates on the premises of such dwelling.

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.