

Approved December 3, 1986
Date

MINUTES OF THE House COMMITTEE ON Transportation

The meeting was called to order by Rex Crowell at
Chairperson

1:30 ~~xx~~ p.m. on January 23, 1986 in room 519-S of the Capitol.

All members were present except: Representative Knopp - excused.

Committee staff present:

Bruce Kinzie, Revisor of Statutes
Hank Avila, Legislative Research
Donna Mulligan, Committee Secretary

Conferees appearing before the committee:

Mr. Robert Elliott, Kansas Corporation Commission
Mr. Richard D. Kready, KPL Gas Service Company
Mr. Fred Allen, Kansas Association of Counties
Mr. Jim Hague, Abilene, Kansas
Mr. Norman Bowers, Coffey County Engineer
Mr. Jim Melvin, Geary County Public Works
Mr. Bill Ewing, Southwestern Bell Telephone Company

The meeting was called to order by Chairman Crowell and the first order of business was a hearing on HB-2666 concerning the Kansas Damage Prevention Act pertaining to notice requirements prior to excavation and liability for failure to adhere to the provisions of the Act.

Hank Avila briefed the Committee on Proposal No. 53--Regulation of Excavation and Underground Explosives studied by the 1985 Special Interim Committee on Transportation.

The Chairman requested that Bruce Kinzie of the Revisor of Statutes office discuss "rebuttable presumption". Mr. Kinzie said it means that if damage is done to a facility and it is shown it was done by the excavation and notice was not given to the utility, then there is a rebuttable presumption of negligence on the part of the contractor.

Representative Snowbarger asked if there is a similar rebuttable presumption if notice was given and location was made, and the line was cut. Mr. Kinzie said that if notice was given and the location of the line was incorrect, the rebuttable presumption would not apply.

Mr. Robert Elliott of the Kansas Corporation Commission, testified in support of HB-2666. (See Attachment 1)

Mr. Elliott emphasized there is a need for damage prevention legislation. He said HB-2666 is a good compromise bill to accomplish this objective because it places the responsibility for addressing utility damage problems on both of the affected parties being the utilities and the excavators.

Mr. Elliott reported that a recent KCC survey found that five major utilities collectively experienced approximately \$1.5 million in utility repairs in 1984 alone.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Transportation,
room 519-S, Statehouse, at 1:30 ~~xxx~~ p.m. on January 23, 1986

Representative Snowbarger asked if there is a rebuttable presumption against contractors, should there also be a rebuttable presumption against the operator of a utility who has improperly located a line. Mr. Elliott replied that the emphasis of the bill is to try to get better communication between excavators and utility companies. He also recommended a solution to the problem would be to have an on-site person from the utility company if there is an uncertainty where the line is located.

Representative Patrick asked if the KCC has authority under current rules and regulations to regulate gas pipeline safety.

After some inconclusive discussion, Chairman Crowell requested that Mr. Elliott provide the Committee information in writing concerning the KCC's rules and regulations authority, and whether such authority is sufficient to accomplish the objectives of HB-2666.

Mr. Richard D. Kready, KPL Gas Service Company, testified in support of HB-2666. (See Attachment 2)

Committee questioning and discussion ensued regarding easements, rights-of-way and third party liability.

Chairman Crowell announced the hearing on HB-2666 would be continued on Monday, January 27, 1986, for those conferees not able to be heard today.

Mr. Fred Allen, Kansas Association of Counties, testified in opposition to HB-2666. (See Attachment 3) He told the Committee the counties do not have major problems with excavation and maintenance except in their road and bridge programs. He reported the principle problem relates to daily county and township maintenance operations and buried phone lines, as well as cables which wander all over the right-of-way.

Mr. Jim Hague, Highway Administrator, Abilene, Kansas, spoke in opposition to HB-2666. (See Attachment 4) He commented that the utility companies in Dickinson County frequently do not obtain easement permits before installing utility lines.

Chairman Crowell requested staff to determine requirements on roads with Federal funding, and if there is any prohibition against charging a utility for an easement, and to what extent you have to allow use of that easement.

Mr. Norman Bowers, Coffey County Engineer, testified in opposition to HB-2666. (See Attachment 5)

Mr. Bowers said he does not believe passage of HB-2666 will significantly help prevent damage to underground utilities, but will create a lot of unnecessary paperwork for the operator and county clerk as well as unnecessary delays for the excavator. He also stated that an optional One-Call System is available now, and suggested the most effective damage prevention measure is adequate warning signs.

Mr. Jim Melvin, Geary County Public Works, spoke in opposition to HB-2666.

Mr. Bill Ewing, Southwestern Bell Telephone Company, testified favorable concerning HB-2666.

He pointed out at this time Southwestern Bell Telephone Company is not a part of One-Call, but negotiations are currently underway, and they probably will become a member. Mr. Ewing stated no one should be compelled to join One-Call if they do not wish to join.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Transportation,
room 519-S, Statehouse, at 1:30 ~~am~~ p.m. on January 23, 1986

Representative Patrick asked about why utilities haven't requested the KCC to implement a mandatory One-Call service and have its membership costs become a part of the rate structure.

Mr. Bob Elliott of the Kansas Corporation Commission said they are aware that some utilities are members of One-Call and the KCC has indirectly given their approval by allowing them to pass on those costs of the membership.

Representative Erne asked if Mr. Richard Kready is a lobbyist for One-Call, and asked for an explanation of the One-Call service.

Mr. Richard Kready, KPL Gas Service Company said he is a lobbyist for the Kansas Power and Light/Gas Service Company which is a member of One-Call. He explained One-Call is an organization of utilities and underground facility operators who pay to operate the service. Mr. Kready said the fees are based on the number of underground facilities they have, and the number of quarter sections throughout the state they operate in.

Chairman Crowell announced the hearing on HB-2666 would be resumed on Monday, January 27, 1986.

The meeting was adjourned at 3:10 p.m.


Rex Crowell, Chairman

GUEST LIST

COMMITTEE: TransportationDATE: 1-23-86

PLEASE PRINT

NAME	ADDRESS	COMPANY/ORGANIZATION
Helen Stephens	Topeka	Ks. Plumbing, Htg. Ctg. Contr.
Allen Inlow	Wichita	✓
Jim Melvin	Junction City	Geary Co. Public Wks.
Norman Bowers	Burlington	Coffey Co. Engineer
Allan L. Baker	Fredonia	Wilson Co.
Charles Ingle	Erie	Neosho County
Fred Allen	Topeka	Ks. Assoc. of Counties
James A. Hague	Abilene	Dickinson County
Dan Morgan	Topeka	AGC of KS
DAN RAMLOW	TOPEKA	KS. CONTRACTORS ASSN.
Robert Elliott	Topeka	KCC
RALPH SKOOG	Topeka	Ks. OATU Assn.
S. Jane Elliott	Topeka	Ks. (Topeka) Chapter Natl. Elect. Contr. Assoc.
Kathy G. Marny	Topeka	Mech. Cont. Assn. of Ks.
Janet Stubbs	"	HOME BUILDERS ASSN. of Ks.
Don Schnack	Topeka	Ks. Indus. Oil & Gas Assn.
ROSEMARIE T. STONEHILL	DETROIT MICHIGAN	ANR PIPELINE COMPANY
TREVA POTTER	TOPEKA	NORTHERN NAT. GAS
Charles Nicolay	Topeka	Ks. Oil Marketers Assn.
BRUCE GRAHAM	Topeka	Ks. Motor Carriers Assn.
Tom Whitaker	Topeka	Ks. Motor Carrier Assn.
Wilbur Leonard	Topeka	Ks. Telephone Assn.
KICK ENEWOLD	TOPEKA	AT&T
WALTER DUNN	✓	FKOGA
Bill Greed	Topeka	KCC.

TESTIMONY BEFORE THE HOUSE TRANSPORTATION COMMITTEE

HOUSE BILL 2666
KANSAS DAMAGE PREVENTION ACT

BY ROBERT ELLIOTT
KANSAS CORPORATION COMMISSION

JANUARY 23, 1986

Good afternoon Mr. Chairman and members of the Committee. I am Robert Elliott, Chief Engineer, for the Kansas Corporation Commission.

The purpose of my testimony is two-fold. First, I would like to emphasize that there is a need for Damage Prevention legislation, and, second, House Bill 2666 is a good compromise bill to accomplish this objective.

We believe this is a good compromise bill because it places the responsibility for addressing utility damage problems on both of the affected parties: the utilities and the excavators. A recent KCC survey illustrates that this problem is significant. Five major utilities collectively experienced approximately \$1.5 million in these type of utility repair costs in 1984 alone. Please understand that we are not singling out excavators. We simply believe the responsibility to solve this problem rests equally with both groups.

Areas of benefit in this bill for the contractors includes:

(1) If the operator fails to respond after being given proper notice, the excavator may proceed and not be held liable for any direct or indirect damages resulting from contact with the operator's facilities.

*H. Transp. 1/23/86
Attachment 1*

(2) The bill acknowledges that emergencies will occur and that, in these cases, the excavator only need give notice as soon as reasonably possible.

Areas of benefit from the Utilities perspective include:

(1) Excavators must provide prior notice of construction and give 2 days notice, where possible. This advance notice gives the utility the opportunity to provide this free locate service with as small a staff as possible and thereby avoid increasing ratepayer bills unreasonably.

(2) Failure of the excavator to give prior notice of construction results in a rebuttable presumption of negligence when there is damage to underground utilities.

We also continue to support this bill because the U.S. Department of Transportation's rating of our Pipeline Safety Program is affected by whether or not we have this legislation.

In summary, the KCC believes that we collectively need to begin addressing the problem of damage to underground utilities now. We need to look to the future when reviewing the merits of this legislation and at the same time, recognize that its purpose is to develop a new cooperative framework for excavators and utilities. No one can change the complaints and problems experienced in the past, but we can work together to reduce their occurrence in the future.

Thank you for the opportunity to make these comments. I would be happy to answer any questions you may have.

ADDENDUM TESTIMONY BEFORE HOUSE TRANSPORTATION COMMITTEE

HOUSE BILL 2666
KANSAS DAMAGE PREVENTION ACT

BY ROBERT ELLIOTT
KANSAS CORPORATION COMMISSION

During the January 23 hearing, Representative Patrick and Chairman Crowell asked that I respond in writing to the following question:
"Can the KCC Pipeline Safety Division use its authority under K.S.A. 1,150 to accomplish the same objectives as House Bill 2666?"

The KCC Pipeline Safety Division currently requires each of its operators to have a Damage Prevention Program in place (49 CFR 192.614 and 49 CFR 192.707) and K.S.A. 1,150 provides sufficient authority to do this. However, the entire success of these efforts by the KCC depends upon the utilities knowing in advance that excavation is going to occur near their facilities. Obviously, the KCC has no authority over excavators, and consequently, it does not currently have authority to ensure the success of the Damage Prevention programs it is mandating. Communications from excavators are essential prior to the start-up of construction.

From a bigger perspective, the KCC believes this problem needs statewide attention because:

- (1) The problem involves all underground utilities (gas, electric, telephone, water, cable television, etc.)
- (2) Greater numbers of miles of underground utilities, are being laid each week.

(3) The utilities and excavators need a framework for working cooperatively together before the costs of this problem get completely out of hand and any adversarial relationship that may exist now becomes irreconcilable.

(4) An inability to bring this problem under control means the general public suffers from both the loss of service when these lines are damaged and the higher utility bills associated with the repairs.

Thank you for the opportunity to make these comments.

Testimony Before

HOUSE TRANSPORTATION COMMITTEE

House Bill 2666
KANSAS DAMAGE PREVENTION ACT

By RICHARD D. KREADY
KPL GAS SERVICE
Director of Governmental Affairs

Representing
KANSAS ONE-CALL SYSTEM, INC.

January 23, 1986

Mr. Chairman and Members of the Committee:

We support the enactment of the Kansas Damage Prevention Act not merely to protect property, but indeed to protect the lives, health and safety of people throughout the State of Kansas.

Many of the public's most basic human needs are supplied through underground facilities. To prevent life threatening events, it is essential that excavators take reasonable precautions before they dig. There is an obvious danger to the excavator who could be killed or seriously injured by inadvertently digging into an underground facility such as a gas or electric line, but the catastrophic danger also can include many others. Most of us have read of high-pressure natural gas lines being ruptured with the resulting explosion and fire injuring people and damaging property throughout a several block radius. We've also read of the hardships faced when such an accident required many hours or days to repair, causing others (sometimes entire communities) to go without those life-essential services. Without heat in their homes many people (particularly infants and elderly) can die of hypothermia; others can die because of an interruption of electricity which is needed to operate respirators and kidney dialysis machines, etc. When communication lines are severed, citizens are at least inconvenienced

*H. Transp. 1/23/86
Attachment 2*

and many could be seriously injured or die because they were unable to make an emergency phone call, etc. A multitude of other health and environmental dangers can be caused by an excavator accidentally damaging underground facilities.

Kansas One-Call System, Inc. is an organization of underground facility operators pooling their resources together to have a notification center available for excavators to call before they dig. Surely you'll agree that taking a couple of minutes to make a toll-free call to a notification center such the Kansas One-Call System, Inc. (800/Dig-Safe), is a reasonable precaution to take before excavating.

We agree with the interim committee's report recognizing the need for a statewide damage prevention program and, as it states, "Optimally, it should be a universal one-call system." If every operator of underground facilities would join together in a single statewide notification center, it then would be very easy for excavators to make one toll-free call which would notify all operators of the intention to excavate. I believe everyone agrees that making that one phone call would not be an unreasonable burden, particularly in view of the tremendous savings possible in protecting life, health and property as well as preventing construction time delays.

I hope you will see the wisdom in promoting safety through encouraging notification before digging. House Bill 2666 encourages this notification process by imposing a rebuttable presumption of negligence if damage resulted after the excavator failed to give notice. We don't believe that this is an onerous penalty -- it merely emphasizes the need to call before excavating.

We do believe it is in the best interest of the State of Kansas to eliminate most of the exceptions expressed in Section 1(c). While I understand

your desire not to impose any further obligation on your constituents, you might also find that exempting them in this instance is not necessarily doing them a favor. Even some "agricultural activity" could result in a dangerous excavating situation. We suggest you consider amending this proposal to exempt tilling soil not to exceed ten inches in depth rather than exempt all "agricultural activity other than that performed by a contractor." We also recommend Section 3(c) be amended to read, "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 each project.

Recognizing that excavators prefer a single statewide notification center, we suggest your committee give additional consideration to the county clerk option that currently is part of this bill. To encourage greater participation in the notification center(s), perhaps you will want to return the county registration fee to \$100 like the Oklahoma law.

Also, to promote greater simplicity for the notification process, you might want to further define a notification center to require representation of some minimum number (i.e., five) of underground facility operators. This could help minimize the number of notification centers that would have to be called prior to excavating.

While most of the members of Kansas One-Call prefer not to have any vertical requirement in Section 1(1), we suggest a reasonable compromise on that definition to read, "'tolerance zone' means the area within 24 inches of the outside dimensions in all vertical and horizontal directions of an underground facility."

With these few amendments, we believe HB 2666 will be a better piece of legislation, but most importantly we encourage you to establish a damage prevention act to protect the life, health and property of your constituents.

January 28, 1986

To: The House of Transportation Committee
From: Kansas Association of Counties
Re: HB-2666 Relating to Excavation

We wish to express serious reservations about the benefits of the aforementioned bill. Counties do not have major problems with excavation and maintenance except in their road and bridge programs. The principle problem relates to daily county and township maintenance operations and buried phone lines and cables which wander all over the right-of-way. This was explained in the written testimony presented in your meeting last Thursday.

We would prefer that the bill not be passed. However if it is necessary that a uniform reporting service be available we would favor and support the "one call system". We would also like the current bill to be amended to exempt counties from liability for damage to facilities on the road right-of-way.

*H. Transp. 1/23/86
Attachment 3*

BUTLER COUNTY
HIGHWAY DEPARTMENTOFFICE OF COUNTY ENGINEER
EL DORADO, KANSAS 67042T. L. FARMER
KANSAS LICENSED PROFESSIONAL
ENGINEER NO. 2499

January 27, 1986

Fred D. Allen
Kansas Association of Counties
Suite D, 112 W. 2nd St.
Topeka, Kansas 66603

Dear Mr. Allen:


Following is an actual situation involving a S. W. Bell buried cable and Chelsea Township of Butler County, Kansas. The Trustee of this Township is Mr. Rex Milbourn, Rte 3, El Dorado, Kansas. The Clerk is John Scribner and the Treasurer is Steve Sundgren. Any of these gentlemen will verify the facts.

Chelsea Township wished to add some pipe to three existing culverts which were narrow in the roadway. They suspected buried telephone cable so they called S.W. Bell who proceeded to mark the locations. Subsequently the Township hired a backhoe and proceeded on September 26, 1985 to do the work.

The project went smoothly and they had the backhoe available so on the way back in at a location 3.5 miles from the above culverts they stopped to clean out around a silted in 18 inch pipe culvert. At this location they ran into a buried cable that was close to the pipe and was very shallow. Unfortunately the cable was severed while doing this normal maintenance operation. There were no signs at the location about 3/8 mile north of the S.W. Corner of SW $\frac{1}{4}$ Sec. 1-T25S-R6E in Chelsea Township of Butler County.

The Township was presented a bill for \$1,099.98 and received demands and threats if the bill was not paid. They turned the bill to their insurance company but are concerned about the unfairness of such demands when they were performing their duty on a roadway which the utility occupies only by the grace of the legislature. The Township believes that legislature such as the proposed H.B. 2666 would be a serious problem for their already difficult job.

Very truly yours,


T. L. Farmer,
County Engineer

TLF/mb

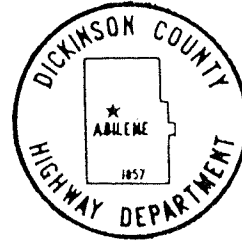
Copy to: Chelsea Township

OFFICE OF THE

Highway Administrator

Dickinson County Court House
ABILENE, KANSAS 67410

913/263-3093



January 23 ,1986

HOUSE TRANSPORTATION COMMITTEE
Rex Crowell, Chairman

HB 2666 - Concerning damage to utilities buried underground.

I would first like to say that this proposal is slanted toward utilities and not toward the public agencies who provide the area for the utility to be buried. Even when in Section 8 when defining emergency to health and life the act refers to industrial plants, or public utilities. You should consider two immediate points and the first is that most of the problems we are talking about occur on public roads and these are public roads with easements for utilities, not utility easements with public roads. Point number two is that because of these public road easements the utilities save many dollars because they do not have to obtain private right of way. The public has already gone to the expense of obtaining it. If we are going to have to pay for damaging their utility then the public bodies ought to be able to obtain franchise payments for use of the easements.

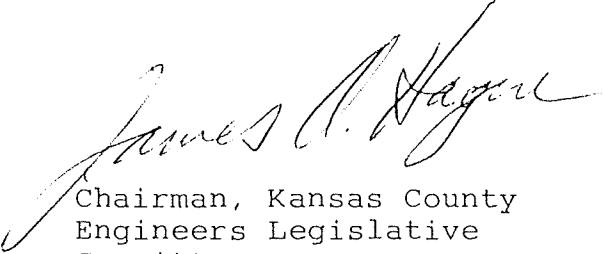
Maybe I would not be so upset if the utilities would first obtain utility easement permits such as the Utility Accomadation Policy for KDOT that Dickinson County has adopted. In our County we have had one company in particular that did what it wanted without asking. After much heartache and angry words, hopefully we have this worked out.

I feel that the public agencies that have to provide safe roads for the public should be able to do their job within normal patterns without having to notify all these utility companies. A lot of the utility lines, such as telephone, are poorly marked so that we do not see them when we go to work. I also feel that buried utilities have a certain place that they should be (in the bottom of the road ditch) and not all over the place. On gravel and dirt roads we have found the cables buried in the middle of the road right over a culvert with no markings in the area. When we dug out the culvert we naturally cut the cable. We also have cut cables when we have put up stop signs. To me there is no excuse for a telephone cable to be in that location. In HB 2666 Section 3 we have to give two days notice before we, as mentioned above, install a stop sign. Then in Section 7 there is no place where it states how long the company has before it responds to the above request. I will tell you that I cannot wait to erect a stop sign that is down, it will be put back up when we are notified. If the utility was in an expected area such as the road ditch a lot of problems could be avoided. Also this act makes us notify them, how about them notifying us before they start construction. Then the problems that this bill addresses could be avoided. I do not feel that we should be

H. Transp. 1/23/86

Attachment 4

penalized for doing our job and I would like to see this bill defeated. I would also ask that you check with your own Highway Departments and County Clerks to get their opinions. If you have further questions please call me.


Chairman, Kansas County
Engineers Legislative
Committee

My name is Norman Bowers. I am Coffey County Engineer. I have been in road construction work since I graduated from college 14 years ago. I have been worked around and been involved in relocation of many types of underground utilities, but mostly with rural water districts, United, Continental, and Southwestern Bell Telephone Companies. As a County Engineer, I am representing an excavator's viewpoint on this bill.

I don't think this bill will significantly help prevent damage to underground utilities. It will create a lot of unnecessary paperwork for the operator and county clerk, and unnecessary delays for the excavator. If the operator thinks a one call system will help, he has the option to participate in that now. The most effective damage prevention measure is adequate warning signs. A backhoe operator will call if he sees a sign.

If you pass this bill out of committee, I do have a few comments that would make it useable for the excavator.

(1) A one or two call system would be far better than a list maintained by the County Clerk.

(2) If the County Clerk is going to keep a list of operators, the operators should file annually. Included with the filing should be a current zerox reproducible map showing general locations of lines in the county. These maps should be made available to the excavators. Otherwise an excavator, unfamiliar with the area, would have to call every operator in the county not participating in the one call system.

All operators should conspicuously mark their line. Operators not participating in a one call system should be required to mark their line better than those that participate.

All new lines should be required to have pipeline marking tape installed a foot above the new line. This method is a very effective warning and is inexpensive.

In Section 1, Item C, the definition for "excavation" is too broad. I suggest that "excavation means any operation such as digging or blasting which might reasonably be expected to damage a facility if one was present. I think that operators will be overwhelmed with calls if you leave this broad definition as is. The exception for "road and ditch maintenance that does not change the original road grade or ditch flow line" is impossible to apply to most county roads since no plans are usually available.

I have a few comments on telephone lines on public right of way. In the 1960's, telephone companies started burying a lot of cable in rural areas. Most cable is buried on road right of way by authority of the Board of County Commissioners. In nearly every county, a condition of the permit was that, if required for road construction purposes, the line would have to be moved at no cost to the county.

The telephone company submitted a drawing of the proposed cable location and agreed to bury the line 24" deep. As years passed, the Counties began to find out that the telephone cables had not been placed properly.

H. Transp. 1/23/86
Attachment 5

These lines were usually installed with a type of plow pulled by a dozer. The dozer operator did not follow a straight line, but took the path of least resistance. If the road was too hard, he went in the ditch, if the ditch was wet, he went in the road, he went around sign posts and small trees, over culverts, around culverts, just wherever was the fastest. The bury was supposed to be 24 inches, but seldom is, 12-14 inches is not unusual.

The end result of this haphazard installation is that instead of the telephone cable just obstructing major road construction. It interferes with even minor maintenance items like cleaning out a culvert end, or replacing a culvert pipe. I point this out because I think the telephone companies were negligent for not installing the lines properly, and have caused counties undue expense in working around these lines, and waiting for lines to be relocated.

On most minor road projects near telephone lines, the telephone line is not damaged. When it is damaged, it is usually because the line was not installed at the required depth, and not because no one knew where it was located. Section 12 of House Bill 2666 appears to establish the liability for damage to facilities on the excavator. In the case of telephone lines located on road right of way, the counties will be forced to require telephone companies to run temporary lines around minor projects. I estimate that there will be 10 to 20 times more relocations than at present. And I think this will cost the telephone companies more money than an occasional damaged cable.