

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 ~~xxx~~/p.m. on January 27, 1986 in room 519-S of the Capitol.

All members were present ~~except~~

Committee staff present:

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

Conferees appearing before the committee:

Mr. Wilbur Leonard, Kansas Telephone Association
Mr. Gil Crouse, Rainbow Telephone Company
Ms. Treva Potter, Northern Natural Gas Company
Mr. Dan Ramlow, Kansas Contractors Association
Mr. Ralph Skoog, Kansas Cable Television Association
Mr. Charles Kelly, National Electrical Contractors Association
Ms. Willie Martin, Sedgwick County Commissioners
Ms. Janet Stubbs, Home Builders Association of Kansas
Ms. Kathy Marney, Mechanical Contractors Association of Kansas
Mrs. Mary Turkington, Kansas Motor Carriers Association
Mr. Jim Sullins, Kansas Motor Car Dealers Association

The meeting was called to order by Chairman Rex Crowell and it was announced hearings would be resumed on HB-2666 concerning enacting the Kansas Damage Prevention Act pertaining to notice requirements prior to excavation and liability for failure to adhere to the provisions of the Act.

Mr. Wilbur Leonard of the Kansas Telephone Association testified in support of HB-2666. (See Attachment 1)

He said the Kansas Telephone Association supports the One-Call concept and anticipate that most of the local telephone companies will participate in that project. He pointed out that in recent years the industry practice has been to bury all possible cables and drop lines, and contrary to statements made before the Committee, those underground cables and lines are placed on legal easements generally in the same location where poles were set in the days of the aerial cable.

Mr. Gil Crouse of the Rainbow Telephone Company, Everest, Kansas, appeared before the Committee in support of HB-2666. Mr. Crouse said he believes the bill is necessary and urges its passage.

Ms. Treva Potter, Northern Natural Gas Company, presented favorable testimony in regard to HB-2666. (See Attachment 2)

She stated Northern Natural Gas supports the One-Call concept because it would increase public safety and the system has the potential for reducing utility interruption.

Mr. Dan Ramlow, Kansas Contractors Association, testified as to their conditional support of the concept of HB-2666. (See Attachment 3)

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Transportation,
room 519-S, Statehouse, at 1:30 ~~xxx~~ p.m. on January 27, 1986

Mr. Ralph Skoog, Kansas Cable Television Association gave favorable testimony concerning HB-2666.

Mr. Charles Kelly of the National Electrical Contractors Association testified as a conditional proponent of HB-2666. (See Attachment 4)

Mr. Kelly stated HB-2666 represents a firm step in the right direction, however, some concerns remain to be resolved. He noted that taken literally, the definition for excavation precludes a contractor from agricultural activity. Mr. Kelly recommended the definition be amended.

Ms. Willie Martin, Sedgwick County Commisioners, testified in opposition to HB-2666. (See Attachment 5)

Ms. Martin said she viewed this legislation as an attempt to transfer what should be the liability of utility companies to the county and other incorporated municipalities. She requested that the Committee reject HB-2666, and further stated the private sector must take responsibility for their own problems in this case and not look to government to solve them.

Committee discussion ensued regarding the responsibility of county clerks as the bill is currently drafted.

Representative Spaniol distributed copies of a newspaper article dated April 17, 1985, to the Committee regarding settlement by the Secretary of State of a threatened lawsuit for failing to identify a lien on a loan to a coin shop. (See Attachment 6)

Ms. Janet Stubbs of the Home Builders Association of Kansas, could not be present for the hearing on HB-2666, however, submitted written testimony opposing the bill. (See Attachment 7)

Ms. Kathy Marney of the Mechanical Contractors Association of Kansas, was unable to be present for the hearing on HB-2666, however, submitted written testimony opposing the bill in its current form (See Attachment 8)

The hearing on HB-2666 was concluded.

Mrs. Mary Turkington of the Kansas Motor Carriers Association presented a bill request to the Committee which would raise the allowable height for vehicles from 13½ to 14 feet.

A motion was made by Representative Spaniol to introduce the request as a Committee bill. Motion was seconded by Representative Wilbert. Motion passed.

Mrs. Mary Turkington presented another bill request to the Committee concerning the term "gross weight" of a vehicle as used in KSA 1985 Supp. 8-1904, and clarifying the applicability to wreckers or tow trucks.

A motion was made by Representative Wilbert to introduce the request as a Committee bill. The motion was seconded by Representative Justice. Motion passed.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Transportation,
room 519-S, Statehouse, at 1:30 ~~am~~/p.m. on January 27, 1986

Mr. Jim Sullins of the Kansas Motor Car Dealers Association presented a bill request to the Committee concerning the Lemon Law. He said his Association wishes to have a section in the law saying the manufacturer cannot charge the cost of compliance with the Lemon Law back to the dealer. (See Attachment 9)

A motion was made by Representative Dillon to introduce the request as a Committee bill. The motion was seconded by Representative Smith. Motion passed.

Mr. Sullins presented a second bill request concerning declaring the brokering of vehicles unlawful and requiring vehicle dealers to furnish and maintain a bond. (See Attachment 10)

Committee discussion ensued concerning the introduction of this bill, however, no motion for introduction was made.

Chairman Crowell announced the next matter taken up would be Committee discussion and action on HB-2665 concerning axle and wheel weight limits.

A motion was made by Representative Harper to recommend HB-2665 favorable for passage. The motion was seconded by Representative Erne. Motion passed.

The meeting was adjourned at 2:50 p.m.


Rex Crowell, Chairman

GUEST LIST

COMMITTEE: Transportation

DATE: 1-27-86

PLEASE PRINT

NAME	ADDRESS	COMPANY/ORGANIZATION
Charlene Wilson	Topeka	AT&T
Dave Corson	Topeka	K P C
Rick Kready	"	"
Tom Whitaker	Topeka	Ks Motor Carrier Assn
Mary E. Turkington	Topeka	Kansas Motor Carriers Assn
Barbara Etzel	Topeka	KS - House employ
Robert Elliott	Topeka	KCC
JEFF RUSSELL	TOPEKA	UNITED TELEPHONE
Wilbur G. Leonard	✓	Ks. Tel. Assn
Gilbert V. Crouse	Everest	Rainbow Tel. Assn.
Philip Skalleman	Topeka	Intern
DICK COMPTON	HAYS	MIDWEST ENERGY
JERRY COOPER	TOPEKA	KG & E
BILL EWING	TOPEKA	S.W. BELL TEL. CO.
TAEVA POTTER	"	NORTHERN NAT GAS
R. SKOOG	Topeka	Ks @ ATV Assn
Louis Stroup Jr.	McPherson	Kas. Municipal Utilities
ED DESOIGNIE	TOPEKA	KDOT
W ^m J. Armstrong	Topeka	KDOT
CHARLES P. KELLY	WICHITA	NATL ELECT. CONTRS. ASSN.
ROSEMARIE T. STONEHILL	DETROIT, MICHIGAN	ANR PIPELINE COMPANY
SIM SUCCINS	TOPEKA	Ks Motor Car Dealers Assn
PAT BARNES	TOPEKA	Ks. Motor Car Dealers Assn.
DAN RAMLOW	TOPEKA	Ks. Contractors Assn.
Merriman Hoyer	Topeka	

BEFORE THE HOUSE COMMITTEE
ON
TRANSPORTATION

Statement of the Kansas Telephone Association
In Support of House Bill No. 2666

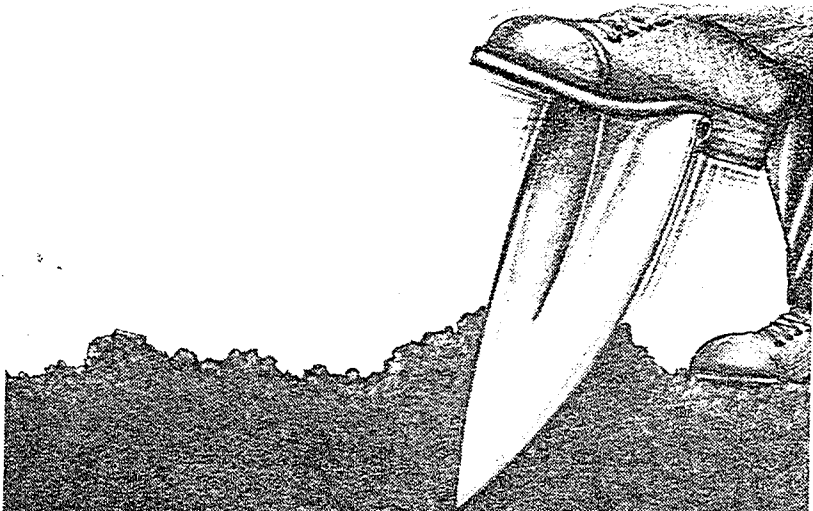
I am Wilbur Leonard, Executive Vice President of the Kansas Telephone Association, whose members provide approximately 96% of the local service to the citizens of Kansas. The Association supports the one-call concept and we anticipate that most of the local telephone companies will participate in that project.

In recent years the industry practice has been to bury all possible cables and drop lines, both for aesthetic reasons and to reduce catastrophic storm damage and maintenance costs. Contrary to statements made before this committee, those underground cables and lines are placed on legal easements, generally in the same location where poles were set in the days of aerial cable. There is a problem out there. Our telephone lines can offer little resistance to the bulldozer or backhoe. The result is that people find that their service has been rudely interrupted.

We are concerned with the great number of telephone outages experienced as a result of damage to our underground facilities. When a cable is severed, not only do the customers who receive service through those lines find they are without service, and often incur personal or economic hardships, but that segment of the general public which might be attempting to communicate with those customers is at least inconvenienced.

The cost of repairing cables is borne by telephone users and adds to the already high cost of service. We are working toward the reduction of this unnecessary waste. We will cooperate with all excavators who will notify us when and where they will dig. While we will continue these efforts regardless of legislation, we consider the requirements imposed on both operators and excavators by this bill to be both fair and reasonable. No one claims this is a perfect solution, but we believe it constitutes a step in the right direction.

*H. Transp. 1/27/86
Attachment 1*



DON'T CUT SOMEONE'S LIFE LINE.

Second to second, the phone lines are filled with conversations of life. Sometimes, with conversations of life and health. So, accidentally cutting the phone line is just like cutting someone's life line.

Before you use that shovel, backhoe, dozer, before you dig at all, call. Save this ad, or call your Customer Service Center. The number is listed in The Phone Book™.



Yes, doctor, she's been running a fever...
and you're not going to let her...
Uh, well, uh, I was worried...
Year, I'd like to see you...
and for the first time...
Hello, Grandpa, how are you...
Now, how do you feel...
and Bill, does that...
I need an ambulance...
right, I got that one...
Can you guys come to...
Heather in Fran, just to...
oh, and Mom, when you send me...

Before you dig up the ground, dig up this number:

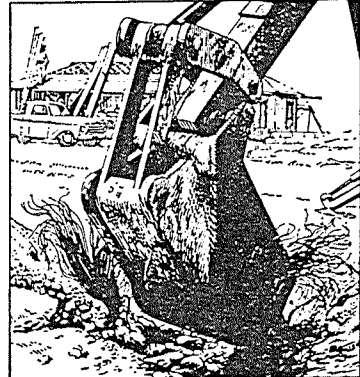
DIGGERS ANONYMOUS
Dial "0" and ask for
Enterprise 20020

(No Charge To Calling Party)

dial
before
you dig

YOU MAY BE DIGGING INTO
UNDERGROUND TELEPHONE
CABLE OR CONDUIT.

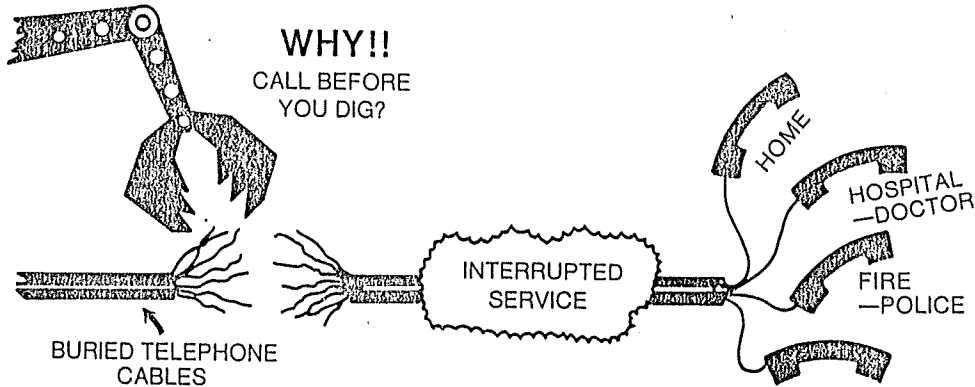
FOR INFORMATION CONCERNING THE LOCATION
OF UNDERGROUND CABLE, CALL
(Toll Free) 1-800-344-7233



PAID
Mast Advertising
& Publishing, Inc.

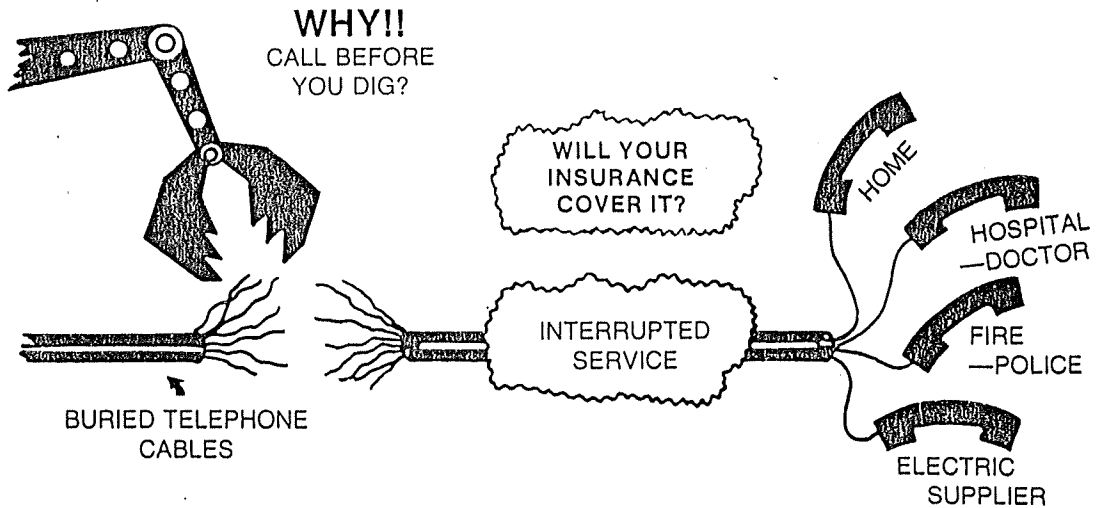
If Undeliverable Do Not Return
Gardner, Kansas 66030

Subscribers of Rainbow Telephone Co-op. are reminded that if any digging is planned on their premises to call the headquarters office in Everest—collect 913-548-7511. Damage to underground cable is not only costly but telephone service could be interrupted at a time of emergency. Rainbow Telephone Co-op. personnel are available to assist in locating underground cable at no charge.



Fairview-Everest, Kansas

1



WARNING

UNDERGROUND TELEPHONE CABLES

BEFORE DIGGING...

Contact Your Local Telephone Co.

For H & B Communications 800-432-8296

For Wilson Telephone Co. 800-432-7607

NO CHARGE FOR LOCATION OF CABLES!

STATEMENT ON HB 2666
TO THE HOUSE TRANSPORTATION COMMITTEE
JANUARY 27, 1986

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, MY NAME IS TREVA POTTER AND I AM WITH NORTHERN NATURAL GAS COMPANY.

NORTHERN'S POLICY IS TO JOIN OPERATING ONE CALL SYSTEMS AND PARTICIPATE IN THE DEVELOPMENT OF PROPOSED NEW SYSTEMS IN THE STATES WHERE WE OPERATE.

WE SUPPORT THE ONE CALL CONCEPT FOR SEVERAL REASONS.

THE MOST IMPORTANT, OF COURSE, IS PUBLIC SAFETY. THE ONE CALL SYSTEM WOULD HELP PROTECT THE CONSTRUCTION WORKER ON THE JOB AS WELL AS THOSE LIVING NEAR THE CONSTRUCTION SITE. IF ONLY ONE LIFE IS SAVED BECAUSE OF IT, THEN IT HAS SERVED ITS PURPOSE.

ANOTHER BENEFIT IS THAT SUCH A SYSTEM HAS THE POTENTIAL FOR REDUCING UTILITY INTERRUPTION. KNOCKING OUT SERVICE, WHETHER IT IS A TELEPHONE, WATER, GAS OR ELECTRIC LINE, IS NOT JUST ANNOYING OR EXPENSIVE. IT COULD CAUSE INJURY OR EVEN BE FATAL. AND, ELIMINATING NEEDLESS REPAIR DOLLARS COULD HELP HOLD DOWN UTILITY COSTS TO CONSUMERS.

WE BELIEVE THAT DAMAGE PREVENTION LEGISLATION IS IN THE BEST PUBLIC INTEREST.

*H. Transp. 1/27/86
Attach. 2*

KANSAS CONTRACTORS ASSOCIATION
TESTIMONY ON HB 2666 BEFORE
THE HOUSE TRANSPORTATION COMMITTEE
JANUARY 23, 1986

Mr. Chairman and members of the Committee. My name is Dan Ramlow and I am Assistant Manager of the Kansas Contractors Association. Headquartered in Topeka, our association represents more than 300 heavy, highway and utility contractors and suppliers, and we appreciate the opportunity to speak on HB 2666, the proposed Kansas Damage Prevention Act.

I speak today in conditional support of HB 2666, or at least the concept of the bill. Let me explain. Since July of last year, and throughout the 1985 interim session on Proposal No. 53, we have testified to our total support of a "One-Call System" in the true sense of the word. By this we mean a truly one-call system -- where a contractor, or "excavator" by the bill's definition, would only have to make ONE call to determine the number of operators with facilities within his construction site area. And ONE call to notify these same operators that excavation will be starting near or on the location of their facilities.

Such a truly one-call system would solve many of our problems, whose existence has created the need for this legislation. I believe the original intent of Proposal No. 53 was to create a truly one-call system. But HB 2666 does not establish a true, workable system by which one call would contact all operators about impending construction. We want all utilities with facilities in Kansas to belong to the Kansas One-Call System. HB 2666 does not go far enough to do what we believe Proposal No. 53 was intended to do -- it does not create a truly one-call system. At the time of

*H. Transp. 1/27/86
Attach. 3*

this testimony's writing, Southwestern Bell Telephone, countless rural water districts, electric co-operatives, small municipal water and electric companies, were not members of Kansas One-Call System. To be a truly, one-call system, these operators must be members. If it takes a legislative or governmental mandate, we would wholeheartedly support such a concept.

Another problem we see with HB 2666, which certain members of this committee and staff will recognize from our interim testimony, is that it is still one sided, though not as much as it was. Our first case-in-point is Section 7, which states that once called, an operator must come out to a job and flag or mark the "approximate" location of his facility, within a certain tolerance zone. The contractor then must determine the "exact" location of the facility, something that is not his property, by using costly hand digging techniques. We believe that if the facility is the property of another party, then the exact location of such facility should be determined by that owner/party.

We face potential liability problems if we hand dig around an area and only know that a facility is somewhere within a certain tolerance zone. This is gambling at its worst. This location determination should be performed by the property owner.

Not only should this be part of the bill, but it should go further. Certain operators have actually told our contractor members that they do not want contractors messing around trying to determine the exact location of their buried facility. These operators have actually come out to the job site and physically exposed their facility. What better way to keep the facility from

being damaged than to actually expose it for all to see. Two Kansas examples of this quickly come to mind. One was an Environmental Protection Agency job where the operator exposed its toll cable -- they didn't want the contractor hand digging or anything else near their cable. Another was a job in Ellis County where the operator exposed its high pressure gas line so there would be no problems of it being cut into because of its being hidden from sight.

In these two examples, it was upon the initiative of the operator that he be responsible to precisely locate his facility -- and that by physical exposure. He knew that danger of facility damage, repair effort, and service disruption costs. It was important enough to them to not just mark a tolerance zone, but actually expose their facility. And if it was important for them, should not it be important enough for all? We respectfully request that when an operator is called about impending excavation in an area near his facility, such operator be required to physically expose, physically move, or lower his facility, prior to the start of construction. We would like this language part of HB 2666. If we have such language, there would not be need for the damage provisions or other sections of the bill. Why is this? Because when a contractor makes a call and as a result the facility is exposed by the owner, there will be no damage to the facility. An exposed facility should not be cut except by negligence and then, of course, the negligent party should pay.

The current language of requiring an operator only to flag or mark a tolerance zone, leads us to believe that many operators simply do not know exactly where their facilities are buried. It is hard to

believe that this would be true -- that an owner does not know exactly where his property is buried. We hope it is not true. Only the utilities themselves can answer this misconception. I can tell you that many of our members believe it to be the absolute truth. In the interim session I offered example after example of case histories where operators came to a job and mismarked or misflagged their facility locations. So the real problem is not that contractors do not make their calls.

I am sure that there are renegade contractors out there who do not make calls. I could rent a backhoe today and call myself a contractor tomorrow and go out and dig up someone's backyard and damage water lines. The bill speaks to guys like that. In fact, if no call is made and facilities are damaged, HB 2666 contains damage provisions for this action, or inaction, depending on your point of view.

But what about the situation that confronts our contractor members throughout the year, whether it be building a highway or digging a sewer line? A call is made to the operator and he flags or marks the tolerance zone of his buried facility and then leaves. The contractor gears up labor, equipment and material for the job, and excavates well away from the marked tolerance zone. Then the facility is cut. The operator comes out to the job and acknowledges an error in marking and says he will repair the damage without cost to the contractor. But wait a minute. What does he mean "Without cost to the contractor?" While the operator holds the job up while he makes the repair, the down-time of that \$50/an hour piece of equipment and a \$10-\$20/an hour operating engineer, which are doing

nothing, is a significant cost.

This brings me to our second request, that we respectfully make, that HB 2666 include language that an operator in error be held responsible for damages to the contractor for lost time and lost labor/equipment costs on the job being held up by the error. The knife of the bill's damage provision should cut both ways. If a call is not made and damage occurs, the contractor should pay. If a call is made and damage occurs to the facility which was not properly marked, then the operator should pay. Just as they can show exact costs of damage repair, we can show exact costs of project down-time.

Mr. Chairman and members of the committee, I hope from this testimony you can tell we conditionally support HB 2666. First and foremost, we support a truly one-call system, even if utility membership must be legislatively mandated. Foregoing this, we support HB 2666 but with amendments to require an operator's physical exposure of his facility, and an operator's payment of a contractor's down-time damages due to the operator's error in facility location and its subsequent damage during construction.

This ends our testimony. We applaud the task of the committee to seek remedies to a serious problem, and hope you can see our viewpoint on the bill's inherent problems. If there are any questions, I will gladly attempt an answer.



January 27, 1986

HOUSE BILL 2666

Honorable Chairman and Committee Members:

I am Charles Kelly, representing the Kansas (Wichita Chapter) of the National Electrical Contractors Association. Today, I am also speaking on behalf of the Kansas Plumbing Heating Cooling Contractors Association, who have a conflicting hearing in the Capitol today, which precludes their appearance.

As you are aware, the Special Committee on Transportation worked very hard on this Bill in recent months and we commend those members for their efforts and understanding. House Bill No. 2666 represents a firm step in the right direction, however, some concerns remain to be resolved.

Taken literally, the definition for excavation precludes a contractor from agricultural activity. As quite a few contractors live on farms, we request that the definition be amended.

The requirement for the County Clerk to operate the program is a major concern. A check with contractors in Oklahoma, who utilizes the County Clerk for this purpose, reflects that the program does not function well. They report that contractor/utility notification is not a priority, and responses often are not timely. Naturally, it is our hope that the Kansas system will function far more smoothly. Unfortunately recent telephone conversations with select urban and rural County Clerks' in Kansas have not inspired confidence.

Several states, Michigan, Connecticut, Georgia and Washington have damage prevention laws which require all operators to join a single notification center. Michigan, as a matter of interest, arrived at mandatory participation after experimenting with the so called "county option". It didn't work as well as hoped, and we fear that even with the best efforts of the County Clerks', the operators, and excavators, it may prove too cumbersome to provide the simple, prompt and accurate coordination necessary for a successful damage prevention program.

We understand, of course, the reluctance of the Legislature to enact a law which would require a private business to join some other private business; or legislation which would create yet another layer of State Government.

The Special Committee has attempted to balance the public good with the private enterprise system in this proposed legislation. We would like to offer for your consideration an alternative which may relieve some of those concerns.

*H. Transp. 1/27/86
Attach. 4*

This proposal would have the State recognize a single notification center. This center would operate as a private non-profit enterprise, but would have public oversight. The center would be managed by a Board of Directors comprised of representatives of the operators, representatives of the excavators who are not also operators, a representative of State Government and a member of the public-at-large, appointed by the Governor. The operation of this center would naturally fall under the jurisdiction of the Corporation Commission. They should be involved in the public appointments to the center.

The center would be financially self-sustaining. Fees charged to the member operators could be based on number of facilities and geographic coverage, and sufficient to offset actual expenses and provide a prudent reserve fund.


One other major area of concern exists. An amendment is recommended to Section 12, paragraph (b) of the Bill. The excavator must be able to rely on the information he receives from the operator. Additionally, if through his error the excavator must stand for the costs incurred by the operator if the excavator damages the operator's facilities, it is only fair that the operator be responsible for the real costs incurred by the excavator due to the operator's error.

If the operator notifies the excavator that it has no underground facilities in the subject area, or if the operator fails to respond, the excavator may proceed and shall not be liable for any direct or indirect damages resulting from contact with said operators facilities. If the operator informs the excavator of the location of the operator's facilities, as provided for in paragraph 4, but the precise location of these facilities cannot be established from the initial information or marking given by the operator, the excavator shall then contact the operator, who shall record the time of this re-notification in his permanent records, and the operator shall then provide further assistance needed to determine the precise location of the underground facilities. In any event above, the operator shall hold the excavator harmless for any direct or indirect damages, and shall reimburse the excavator for any additional costs for labor, material, damage or delay incurred by the excavator, due to the inaccurate information.

Please be assured that we support the concept of a damage prevention program, and are pleased to continue working with you and other interested parties to arrive at an effective, workable, and equitable system.

Thank you for your time and kind attention. If you have any questions, I would be happy to respond.

Sincerely,


Charles P. Kelly
Executive Manager



Testimony of Willie Martin
Sedgwick County
HB 2666
House Transportation Committee
January 27, 1986

The Board of Sedgwick County Commissioners opposes the enactment of HB 2666 in its present form. Generally, we view this legislation as an attempt to transfer what should be the liability of utility companies to the county and other incorporated municipalities.

Specifically, we object to the designation of the county clerk as the agency responsible for maintaining the lists of operators and notification centers. The addition of this responsibility will require the addition of at least one fulltime position to maintain these lists and to work with excavators calling and visiting the clerks office to obtain information on notification centers. We fear that the clerks office participation in this activity will imply responsibility and liability for the accuracy of the information supplied through these notification centers. It is no secret that the maps and information currently supplied by operators is innaccurate and unreliable which is the primary reason that so many instances of damage to lines occurs.

We feel that this a problem which should be addressed within the private sector without the involvement of the government.

We further object to the inclusion of the county, city and state or any other public entities in the definition of excavators. The notice provisions of Sec. 3(a) will seriously affect the scheduling of public works activities. We would note that it is ludicrous to suggest that the taxpayers should in any circumstance be liable for any damage inadvertently done to utility lines occupying public right of way. The lines are allowed to occupy space in the public right of way as a privilege, and if the public is to be responsible for the lines, then perhaps public governing bodies should reconsider the advisability of granting these privileges.

Sedgwick County already makes every attempt to determine the location of utility lines before commencing any work within or outside of public right of ways. If we hit a line it is not because of our negligence, but because

H. Transp. 1/27/86
Attach. 5

of the inaccuracy of the information supplied to us regarding the location of the lines.

In summary, we request your rejection of this legislation. The private sector must take responsibility for their own problems in this case and not look to government to solve them.

Brier's office to pay to avoid bank lawsuit

By the Associated Press

Secretary of State Jack Brier announced Tuesday his office will pay \$180,000 to avoid a threatened lawsuit from a Kansas City, Kan., bank, for failing to identify a lien on a loan to a coin shop.

The settlement with Twin City State Bank will not be paid with tax funds, but from fees paid by those who use services of the Uniform Commercial Code Division of Brier's office.

The bank lost its legal rights to collateral on loans worth more than \$500,000 because of a mistake made in March 1983 during a computer search of records to determine whether any liens had been filed against Joe Flynn Rare Coins Inc., Kansas City, Kan., Brier said in a prepared statement.

"Information that MidAmerican had filed a lien against the coin shop's inventory was in our files," Brier said. "We missed it. An error in the way the files were searched gave

the wrong information to Twin City."

Twin City officials were told no liens had been filed against the coins, although MidAmerican Bank and Trust Co., Roeland Park, had loaned the coin shop more than \$1 million and filed a lien against the store's entire inventory, Brier said.

The mistake occurred because an unidentified office worker searched for liens against Joe Flynn and against Rare Coin Co., but failed to search for liens against Joe Flynn Rare Coins, Brier said.

Changes have been made to ensure that no more mistakes occur, including a provision to identify employees who search for individual lien records, Brier said.

"We take our responsibility very seriously," he said. "And our record of accurate reporting has been quite good."

In 19 years, just one other case has resulted in payment by the office because of an error made in the Uniform Commercial Code division, Brier said.

H. Transp. 1/27/86
Attach. 6

TESTIMONY
FOR
HOUSE TRANSPORTATION AND UTILITIES COMMITTEE
JANUARY 22, 1986

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE. MY NAME IS JANET STUBBS, EXECUTIVE DIRECTOR OF THE HOME BUILDERS ASSOCIATION OF KANSAS.

I AM APPEARING TODAY IN OPPOSITION TO HB 2666, THE KANSAS DAMAGE PREVENTION ACT.

ALTHOUGH I ATTENDED A MEETING OF UTILITY AND CONTRACTOR REPRESENTATIVES ON THIS ISSUE DURING THE INTERIM AND SCHEDULED AN APPEARANCE OF A REPRESENTATIVE OF THE K.C.C. BEFORE CONTRACTORS IN WICHITA, THE MEMBERS OF THE HOME BUILDERS ASSOCIATION OF KANSAS BOARD OF DIRECTORS WERE NOT CONVINCED OF THE MERITS OF THIS PROPOSED LEGISLATION.

THOSE INDIVIDUALS IN POLICY MAKING POSITIONS IN HOME BUILDERS ASSOCIATION OF KANSAS DO NOT OBJECT TO MAKING CALLS TO THE VARIOUS UTILITIES IN THEIR CITIES TO MAKE THE NECESSARY ARRANGEMENTS FOR EXCAVATIONS.

WE ARE STRONGLY OPPOSED TO THE COUNTY CLERK PROVISION OF THE BILL. THE CONTRACTOR IS PLACED IN A POSITION OF PAYING A \$5.00 FEE PER LIST REQUEST WHILE THE UTILITY OPERATOR PAYS A \$25.00 FEE ONLY WHEN A NEW FILING IS REQUIRED.

IT WOULD APPEAR THAT ALTHOUGH A "STATEWIDE PROGRAM" IS BEING ATTEMPTED IN THE PROPOSAL, IT WILL VARY FROM COUNTY TO COUNTY.

HOME BUILDERS ASSOCIATION OF KANSAS OPPOSES THE NOTICE REQUIREMENTS OF HB 2666. I AM ADVISED THIS AMOUNT OF TIME IS NOT REQUIRED BY UTILITIES UNDER CURRENT PROCEDURE.

*H. Transp. 1/27/86
Attach. 7*

DOES "SPECIFIC LOCATION" MEAN LEGAL DESCRIPTION OR STREET ADDRESS?

THE INTERIM REPORT STATES THE COMMITTEE FELT THE PROPOSED ACT TO BE IN THE BEST INTEREST OF THE RATEPAYERS. HOWEVER, THE FORMULATION OF A ONE-CALL SYSTEM WILL ADD ANOTHER EXPENSE BECAUSE EACH UTILITY COMPANY HAS STATED THEY WILL CONTINUE TO OPERATE THEIR OWN DAMAGE PREVENTION NUMBER.

FOR 'OBVIOUS REASONS, WE ALSO OPPOSE THE "REBUTTABLE PRESUMPTION" PROVISION. INDUSTRY PROBLEMS WITH LIABILITY INSURANCE ARE SIGNIFICANT WITHOUT THIS.

TESTIMONY

HOUSE TRANSPORTATION COMMITTEE

H.B. 2666

BY

KATHY J. MARNEY

MECHANICAL CONTRACTORS ASSOCIATION OF KANSAS

Mr. Chairman and Members of the Committee:

My name is Kathy Marney and I am the Executive Director of the Mechanical Contractors Association of Kansas. I appear before you to testify against H.B. 2666. MCAK supports the concept of the One Call System but we can not support the bill in its current form.

There are several reasons we can not support this bill as written, they are: the system does not mandate that all companies join the system, we oppose criminal penalties to a contractor who has tried every effort to contact the proper authorities but was unsuccessful, and we can not support the two day notice provision.

If the One Call System is put into operation, it should be mandated that everyone join. If all companies are not required to join this system, it would be defeating the purpose of the whole concept. The contractor would be back to square one with calling several different compaines to find out if there are underground systems in the area.

We would not support a bill where criminal penalties would be charged to the contractor if he was negligent for failing to give notice.

*H. Transp. 1/27/86
Attach. 8*

The notice of intent of excavating is unexceptable to the MCAK contractor. As you know, two days can severely hold up a project which in turn will cost the contractor a great deal of money. We would support a prompt and accurate marking of the proposed area of excavating.

In conclusion, MCAK will not support this bill as writen, but does support the concept of the One Call System.

HOUSE BILL NO. _____

By the Committee on _____

AN ACT concerning motor vehicles; automobile warranties under the act commonly called the lemon law; prohibiting manufacturers from shifting the cost of compliance with the lemon law to dealers.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. (a) No manufacturer or its agent shall charge, apportion or impose upon its authorized dealer the loss, cost or expense of making such repairs under this act as are necessary to conform a motor vehicle to all applicable warranties.

(b) No manufacturer or its agent shall charge, apportion or impose upon its authorized dealer the loss, cost or expense incurred under this act in replacing a motor vehicle, accepting return of a motor vehicle or refunding to the consumer the purchase price of a motor vehicle, including any collateral charges.

(c) No manufacturer shall cancel, terminate, refuse to renew or refuse to grant an authorized dealer a franchise agreement, as defined in K.S.A. 8-2401(dd), and amendments thereto, when such cancellation, termination or refusal is based upon facts arising out of or in conjunction with the application of this act to any consumer or motor vehicle.

Sec. 2. This act shall supplement and be in addition to the provisions of 1985 Senate Bill No. 118, Chapter 39, 1985 Session Laws of Kansas.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

H. Transp. 1/27/86
Attach. 9

HOUSE BILL NO. _____

By the Committee on _____

AN ACT concerning motor vehicles; declaring the brokering of vehicles unlawful; requiring vehicle dealers to furnish and maintain a bond; amending K.S.A. 1985 Supp. 8-2404, K.S.A. 8-2408 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. From and after January 1, 1987, K.S.A. 1985 Supp. 8-2404 is hereby amended to read as follows: 8-2404. (a) No vehicle dealer or mobile home dealer shall engage in business in this state without obtaining a license as required by this act. Any vehicle dealer or mobile home dealer holding a valid license and acting as a vehicle salesman or mobile home salesman shall not be required to secure a salesman's license.

(b) No first stage manufacturer, second stage manufacturer, mobile home manufacturer, factory branch, factory representative, distributor branch or distributor representative shall engage in business in this state without a license as required by this act, regardless of whether or not an office or other place of business is maintained in this state for the purpose of conducting such business.

(c) No broker shall engage in business in this state and it shall be unlawful to engage in business as a broker in this state or to sell motor vehicles or mobile homes through or with the aid of a broker.

(d) An application for a license shall be made to the director and shall contain the information provided for by this section, together with such information as may be deemed reasonable and pertinent and shall be accompanied by the required fee. The director may require in the application, or otherwise, information relating to the applicant's solvency, financial standing, or other pertinent matter commensurate with the safeguarding of the public interest in the locality in which the applicant

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Attach. 10

proposes to engage in business, all of which may be considered by the director in determining the fitness of the applicant to engage in business as set forth in this section. The director may require the applicant for licensing to appear at such time and place as may be designated by the director for examination to enable the director to determine the accuracy of the facts contained in the written application, either for initial licensure or renewal thereof. Every application under this section shall be verified by the applicant.

~~(d)~~(e) All licenses shall be granted or refused within thirty days after application is received by the director and shall expire, unless previously suspended or revoked on December 31 of the calendar year for which they are granted, except that where a complaint respecting the cancellation, termination or non-renewal of a sales agreement is in the process of being heard, no replacement application shall be considered until a final order is issued by the director. Applications for renewals received by the director after February 15 shall be considered as new applications.

~~(e)~~(f) License fees for each calendar year or any part thereof shall be as follows:

- (1) For new vehicle dealers or new mobile home dealers, \$50;
- (2) For distributors, \$50;
- (3) For wholesalers, \$50;
- (4) For distributor branches, \$50;
- (5) For used vehicle dealers or used mobile home dealers, \$50;
- (6) For first and second stage manufacturers, \$200 plus \$50 for each factory branch in this State;
- (7) For mobile home manufacturers, \$200 plus \$50

for each mobile home branch in this State;

(9) For factory representatives, \$25;

(9) For distributor representatives, \$25;

~~(10)~~ For brokers \$50;

~~(11)~~(10) For lending agencies, \$25;

~~(12)~~(11) For first and second stage converters, \$25;

~~(13)~~(12) For salvage vehicle dealers, \$50;

~~(14)~~(13) For auction motor vehicle dealers, \$50;

~~(15)~~(14) For vehicle salesmen or mobile home salesmen,
\$5; and

~~(16)~~(15) For insurance companies, \$50.

Any salvage vehicle dealer who is also licensed as a used vehicle dealer shall be required to pay only one \$50 fee for both licenses. Any new vehicle dealer or mobile home dealer who is also licensed as a used vehicle dealer or mobile home dealer shall be required to pay only one \$50 fee for both licenses.

~~(f)~~(g) Dealers establishing supplemental places of business within the same county of their licensure shall be required to pay a supplemental license fee of \$10. Original inspections by the division of a proposed established place of business shall be made at no charge except that a \$5 fee shall be charged by the division for each additional inspection the division must make of such premises in order to approve the same.

~~(g)~~(h) The license of all persons licensed under the provisions of this act shall state the address of the established place of business, office or branch and must be conspicuously displayed therein. If such address is changed, the director shall endorse the change of address on the license without charge if it is within the same county. A change of address to a different county shall require a new license and payment of the required fees.

~~(h)~~(i) Every salesman, factory representative or distributor representative shall carry on their person a certification that the person holds a valid state license. The certification shall name the person's employer and shall be displayed upon request. An original copy of the state license for a vehicle salesman or mobile home salesman shall be mailed or otherwise delivered by the division to the employer of the salesman for public display in the employer's established place of business. When a salesman ceases to be employed as such, the former employer shall mail or otherwise return the original copy of the employee's state license to the Division. A salesman, factory representative or distributor representative who terminates employment with one employer may file an application with the director to transfer the person's state license in the name of another employer. The application shall be accompanied by a \$2.00 transfer fee. A salesman, factory representative or distributor representative who terminates employment, and does not transfer the state license, shall mail or otherwise return the certification that the person holds a valid state license to the division.

~~(i)~~(j) (A) If the director has reasonable cause to doubt the financial responsibility or the compliance by the applicant or licensee with the provisions of this act, the director may require the applicant or licensee to furnish and maintain a bond in such form, amount and with sureties as the director approves, but such amount shall be not less than \$5,000.00 nor more than \$20,000.00, conditioned upon the applicant or licensee complying with the provisions of the statutes applicable to the licensee and as indemnity for any loss sustained by any person by reason of any act of the licensee constituting grounds for suspension or revocation of the license.

Any such bond shall be a corporate surety bond issued by a company authorized to do business in the State of Kansas and shall be executed in the name of the State of Kansas for the benefit of any aggrieved party. The aggregate liability of the surety for all breaches of the conditions of the bond in no event shall exceed the amount of such bond. The surety on the bond shall have the right to cancel the bond by giving thirty days' notice to the director, and thereafter the surety shall be relieved of liability for any breach of condition occurring after the effective date of cancellation. Bonding requirements shall not apply to first or second stage manufacturers, factory branches, factory representatives or salesmen.

(B) The director shall require the applicant or licensee as a vehicle dealer to furnish and maintain a bond in a form and with sureties as the director approves. The amount shall be \$20,000 conditioned upon the applicant or licensee complying with the provisions of the statutes applicable to the licensee and as indemnity for any loss sustained by any person by reason of any act by the licensee constituting grounds for suspension or revocation of the license. The bond shall be a corporate surety bond issued by a company authorized to do business in the State of Kansas and shall be executed in the name of the State of Kansas for the benefit of any aggrieved party. The aggregate liability of the surety for all breaches of the conditions of the bond in no event shall exceed the amount of such bond. The surety on the bond shall have the right to cancel the bond by giving thirty days' notice to the director, and thereafter the surety shall be relieved of liability for any breach of condition occurring after the effective date of cancellation.

(j)(k) No license shall be issued by the Director to any person to act as a new or used dealer, wholesaler, broker, salvage vehicle dealer, auction motor vehicle dealer, second

stage manufacturer, first stage converter, second stage converter or distributor unless the applicant for the vehicle dealer's license maintains an established place of business which has been inspected and approved by the division. First stage manufacturers, factory branches, factory representatives, distributor branches, distributor representatives and lending agencies are not required to maintain an established place of business to be issued a license.

~~(k)~~(l) Dealers required under the provisions of this act to maintain an established place of business shall own or have leased and use sufficient lot space to display vehicles or mobile homes at least equal in number to the number of dealer license plates the dealer has had assigned.

~~(i)~~(m) A sign with durable lettering at least ten inches in height and easily visible from the street identifying the established place of business shall be displayed by every vehicle dealer. Notwithstanding the other provisions of this Subsection ~~(i)~~(m), the height of lettering of the required sign may be less than ten inches as necessary to comply with local zoning regulations.

~~(m)~~(n) If the established place of business or lot is zoned, approval must be secured from the proper zoning authority and proof that the use complies with the applicable zoning law, ordinance or resolution must be furnished to the director by the applicant for licensing.

~~(n)~~(o) An established place of business, otherwise meeting the requirements of this act may be used by a dealer to conduct more than one business, provided that suitable space and facilities exist therein to properly conduct the business of a vehicle dealer.

~~(o)~~(p) Any dealer selling, exchanging or transferring or causing to be sold, exchanged or transferred new vehicles or

new mobile homes in this state must satisfactorily demonstrate to the director that such vehicle dealer or mobile home dealer has a bona fide franchise agreement or mobile home sales agreement with the first or second stage manufacturer or distributor of the vehicle or mobile home manufacturer, to sell, exchange or transfer the same or to cause to be sold, exchanged or transferred.

~~(p)~~(q) The director of vehicles shall publish a suitable Kansas vehicle or mobile home salesman's manual. Before a vehicle or mobile home salesman's license is issued, the applicant for an original license or renewal thereof shall be required to pass a written examination based upon information in the manual.

Sec. 2. From and after January 1, 1987, K.S.A. 8-2408 is hereby amended to read as follows: 8-2408. Except as herein-after provided, every person licensed as a dealer under provisions of this act shall:

(a) On or before the 20th day of each month, file a monthly report, on a form prescribed and furnished by the division of vehicles, listing all sales or transfers, except sales or transfers by a first or second stage manufacturer or mobile home manufacturer to a vehicle dealer or mobile home dealer of new or used vehicles or mobile homes, including the name and address of the purchaser or transferee, date of sale, the serial or identification number of the vehicle or mobile home, and such other information as the division may require.

(b) Salvage vehicle dealers shall, in addition to their monthly sales report, file a quarterly report on a form prescribed and furnished by the division, listing all vehicles which have been or will be dismantled, disassembled or converted to scrap and sold to a scrap processor. Any titles to the vehicles in the possession of the vehicle dealer must accompany the quarterly report.

(c) Make available during regular business hours to any employee of the division or any member of the highway patrol for the purpose of investigation or inspection, all records concerning vehicles or mobile homes purchased, sold or exchanged during the preceding twelve months, including certificates of title on all vehicles or mobile homes ~~transferred~~^{OWNED} by the dealership, except those titles surrendered pursuant to Subsection (b).

(d) Whenever a dealer sells or otherwise disposes of such dealer's business, or for any reason suspends or goes out of business as a dealer, such dealer shall notify the division or return the dealer's license and dealer plates, and the division upon receipt of such notice and plates shall cancel the dealer's license, except that such dealer may, upon payment of 50% of the annual fee to the division, have the license and dealer plates assigned to the purchaser of the business.

(e) In addition to the requirements of Subsection (a), any dealer paying a commission or fee to a broker shall report to the division, on the monthly sales report, the name of the broker ~~and the broker's license number, the broker's state of origin, address and any broker license number.~~

~~(f) Dealers, licensed as brokers must in addition to the requirements of Subsection (a) include on the monthly sales reports, the name of the seller, the transferor or dealer that owns the vehicle or mobile home and whether the seller or purchaser paid the broker's fee or commission.~~

Sec. 3. From and after January 1, 1987, K.S.A. 1985 Supp. 8-2404 and K.S.A. 8-2408 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the Kansas Register.