

Approved 2/20/87  
Date

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES

The meeting was called to order by Sen. Bill Morris at  
Chairperson

9:00 a.m./~~p.m.~~ on February 12, 1987 in room 254-E of the Capitol.

All members were present except:

Sen. Doyen

Committee staff present:

Hank Avila, Legislative Research Department  
Ben Barrett, Legislative Research Department  
Bruce Kinzie, Revisor  
Louise Cunningham, Committee Secretary

Conferees appearing before the committee:

Richard D. Kready, KPL Gas Service  
Gary Reser, Executive VP, Kansas Telecommunications Association  
John C. Woodman, Kansas City Power and Light Company  
Bill Anderson, Water District #1, Johnson County  
Dan Ramlow, Kansas Contractors Association  
Tom Gleason, Independent Telephone Group  
Don Schnake, Kansas Independent Oil and Gas Association  
Kathy J. Marney, Mechanical Contractors Association of Kansas  
S. Jane Elliott, National Electrical Contractors Association  
Helen Stephens, Kansas Plumbing, Heating & Cooling Contractors Assn., Inc.  
Norman Bowers, Kansas County Engineers Association

Written Testimony was Submitted by:

Janet J. Stubbs, Home Builders Association of Kansas  
James A. Hague, Dickinson County Highway Administrator, Abilene, Kansas  
Thomas E. Gleason, Independent Telephone Company Group

HEARING ON S.B. 85 - Kansas Damage Prevention Act.

Rick Kready, KPL Gas Service, spoke in favor of the bill. He said there was a need to protect underground facilities throughout the state that are used to transport essential services. Also, there is danger to the excavator. Twenty-seven states have legislation enacted to minimize these kinds of excavation damages. Kansas has established a notification center (One-call) but that center is not yet being adequately utilized. This proposed bill would encourage participation in the program. This bill would require notification two days before digging (except in cases of emergency) and a rebuttable presumption of negligence is imposed on excavators who damage underground facilities after having failed to call the notification center. A copy of his statement is attached. (Att. 1).

John Woodman, Kansas City Power and Light Company, said they support S.B. 85 as written. They are operating under One-call and find it very satisfactory.

Gary Reser, Kansas Telecommunications Association, spoke in favor of the bill and said they would like to see a damage prevention act in Kansas and would continue to work with the legislature on any possible future modifications. A copy of his statement is attached. (Att. 2).

Bill Anderson, Water District #1, Johnson County, said they support the One-call and would oppose any tampering of the bill as written.

Don Ramlow, Kansas Contractors Association, spoke in conditional support of S.B. 85. They would like to see all utilities with facilities in Kansas join the Kansas One-call system. There are too many rural water districts, electric cooperatives and small municipal water and electric companies that are not members and everyone should have to participate. He suggested an amendment relating to down-time damages due to the operator's error in

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

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES,  
room 254-E, Statehouse, at 9:00 a.m./~~p.m.~~ on February 12, 1987

facility location and its subsequent damage during construction. A copy of his statement is attached. (Att. 3).

Tom Gleason, Independent Telephone Group, said they support the bill but it would add additional cost to the rate payer and the cost to the rural areas would be greater because they have fewer customers.

Don Schnake, Kansas Independent Oil and Gas Association, requested an amendment to the bill to exclude activities related to the drilling in producing crude oil and natural gas. He said it was not the intent of S.B. 181 to include the oil and gas industry. A copy of his statement is attached. (Att. 4). He said many permits are issued on a one-day basis. They know where their pipelines are in remote areas of the state and they have not had any problems. It was suggested that KCC should respond to this since they regulate the industry.

Kathy Marney, Mechanical Contractors Association of Kansas, said they support S.B. 85 but requested amendments. They wanted the program mandated and wanted to shorten the response time of the operator. Also wanted the tolerance zone from 24 inches to 18 inches. A copy of her statement is attached. (Att. 5).

S. Jane Elliott, National Electrical Contractors Association, said they support S.B. 85 but have some amendments to the bill. A copy of her statement is attached. (Att. 6). She said they needed a single agency of some kind.

Helen Stephens, Plumbing, Heating, Cooling Contractors Association, said they support the concept of the bill but feel it should be mandated and all operators should be participants in the notification center. A copy of her statement is attached. (Att. 7). She also submitted a proposed amendment. (Att. 8).

Norman Bowers, Coffey County Engineer, said this bill was not satisfactory to rural areas because it shifts additional liability to county and township governments with delay and expense on even minor road work. He said the county road right-of-ways are now the location of many public utilities. These utilities do not pay any franchise fees. Permits were granted to them by the counties with stipulation that the utilities would move at the request of the county if they interfered with a road project. The counties would oppose any attempt to legitimize improperly installed utilities to presume negligence on the part of the county. He suggested the counties would like to work with an interim committee to come up with a bill that would be acceptable to the counties. A copy of his statement is attached. (Att. 9). He also submitted a Resolution signed by Kansas County Engineers Association opposing S.B. 85. (Att. 10).

James A. Hague, Dickinson County Highway Administrator, submitted a statement in opposition to S.B. 85. (Att. 11).

Janet Stubbs, Home Builders Association of Kansas, submitted a written statement in opposition to S.B. 85. A copy of her statement is attached. (Att. 12).

Thomas E. Gleason, Independent Telephone Company Group, submitted written testimony in support of S.B. 85 but felt the bill places an undue burden on the utility companies to physically protect their facilities. A copy of his statement is attached. (Att. 13).

A motion was made by Sen. Hayden and was seconded by Sen. Martin to approve the Minutes of February 11, 1987. Motion carried.

Meeting was adjourned at 10:00 a.m.

SENATE TRANSPORTATION AND UTILITIES COMMITTEE

Date 2-12-87 Place 354-E Time 9:00

GUEST LIST

NAME	ADDRESS	ORGANIZATION
RON STANTON	TOPEKA	NORTHERN NATURAL GAS CO
Tom Taylor	Topeka	KPL Gas Service
RALPH G. WYSS	5938 Beverly Mission Ka	Water District #1 Johnson County Ka
Jon Bray	Lawrence	KPL Gas Service
Bill Anderson	Mission	Water Dist #1 of Jo Co
John C Woodman	KC Mo.	KC P & L
Gerold Goforth	Topeka	S.W. Bell Tele.
Jay Coors	"	KC I S
DENNY KOCH	"	SW Bell Tel. Co.
Bill EWING	"	"
Tom Gleason	Lawrence	Independent Tel. Co. Group
Rick Kready	Topeka	KPL Gas Service
Kevin Davis	"	League of Ks Mums.
Janet Stubbs	"	H B A K
NORM BOWEN	Burlington	Goffey County - County Eng Assoc.
James A. Hague	Abilene	Dickinson County - Co. Eng. Assoc.
T. M. PICKFORD	TOPEKA	PUBLIC WORKS DIR / CEDAR SHAWNEE CO.

SENATE TRANSPORTATION AND UTILITIES COMMITTEE

Date 2-12-87 Place 254-E Time 9:00

GUEST LIST

NAME	ADDRESS	ORGANIZATION
Robert A. Anderson WALKER HENDRIX	Box 90 Ottawa P.O. Box 787 OTTAWA	KN ENERGY EKOGA
WALTER DUNNIV	Topeka	EKOGA
Robert D. Elliott	Topeka	KCC
Barry F. Johnson	Topeka	K.C.C. Natl. Electrical Contractors Assoc.
Jane Elliott	Topeka	
Kathy J. Marney	Topeka	MECAK
Ralph Skoog	Topeka	KCATV
Don Schuck	Topeka	KI OGA
D. WAYNE ZIMMERMAN	TOPEKA	KCA
Shelley Sutton	Topeka	KES
Dan Ramlow	Topeka	Ks. Contractors Assn.
TREVA POTTIR	TOPEKA	PEOPLES NAT. GAS
Mike Reecht	Topeka	AT&T
Garry Reser	Topeka	Kan Telecomm. Assn.

Testimony Before  
SENATE TRANSPORTATION AND UTILITIES COMMITTEE

Senate Bill 85  
KANSAS DAMAGE PREVENTION ACT

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

February 12, 1987

We support the enactment of the Kansas Damage Prevention Act, Senate Bill 85. This is needed to protect vital underground facilities which serve many basic human needs and more importantly to protect the lives, health and safety of people throughout Kansas.

Underground facilities such as electric, natural gas, water, sewer, telecommunications and petroleum lines have been developed throughout this state to transport and distribute essential services for the citizens of Kansas. Since there is now such a large number of these underground facilities in Kansas, precautions must be taken to prevent life threatening events when excavating.

A multitude of health and environmental dangers can be caused by an excavator accidentally damaging underground facilities. 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. There have been instances where high-pressure natural gas lines have been ruptured with the resulting explosion and fire injuring people and damaging property throughout a several block radius.

People often face hardships when an accident involving underground facilities requires many hours or even days to repair, causing those people (sometimes entire communities) to go without those 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 medical equipment in their homes, such as respirators and kidney dialysis machines. When communication lines are severed, citizens are at least inconvenienced and some could be seriously injured or die because they were unable to make an emergency phone call to police and fire departments or to a doctor.

Twenty-seven states plus the District of Columbia have already enacted legislation in an attempt to minimize these kinds of excavation damages. Although Kansas does not have damage prevention laws, a large group of underground facility operators in Kansas already has established a notification center (Kansas One-Call, Inc. -- 800/DIG-SAFE), but that center is not yet being adequately utilized. The proposed Kansas Damage Prevention Act would encourage the remaining underground facility operators and excavators to participate in this system.

While Senate Bill 85 would encourage underground operators and excavators to use a notification center, it would not be mandatory. This is a compromise. While a uniform, mandatory one-call center would probably be ideal, realistically, it is unlikely that the legislature would mandate that private companies should belong to a non-governmental entity, no matter how worthy. Another option would be having a state agency run the notification center, but we do not believe creating more state government to operate a program that private industry can operate is the best idea at this time of cutbacks. We believe a voluntary notification center, operated by private industry according to state-adopted regulations, is best.

In the past, there has been the question of how excavators can get information about underground facilities from operators who are not members of a notification center. First, we expect the provisions of SB 85 will cause more underground operators to voluntarily join the notification center. Previously, the various parties affected by this legislation have looked at a couple of other possibilities, such as having county clerks or the State Corporation Commission register underground operators who do not belong to a notification center. However, there has been some opposition to both alternatives.

We believe the legislature should go forward with passage of the Damage Prevention Act, and if problems occur because of underground operators who are not members of the notification center, more specific legislation can be developed at that time to address the situation.

Senate Bill 85 encourages excavators to call the notification center (toll free, 800/DIG-SAFE) at least two days before digging (except in cases of emergency). A rebuttable presumption of negligence is imposed on excavators who damage underground facilities after having failed to call the notification center. While current liability laws would already require the excavator to be responsible for such damages, this more specific legal reference will clarify when an excavator is or is not liable. That clarification should expedite settlement of the claims and thereby help to prevent further overburden of the court system.

In order to avail themselves of the rebuttable presumption of negligence, underground facility operators must join the notification center (i.e., Kansas One-Call), pay all of the center's expenses, and respond expeditiously to excavators' requests for facility locations. Underground operators would be required to respond within two days to requests for facility locations, and would have to mark the specific vertical and horizontal locations of those facilities in a distinct manner. If the operator fails to respond or improperly marks the location, the excavator is specifically cleared of liability for any damages.

We believe the two-day notice is a reasonable time limit. In those states that have underground damage prevention laws, two days is a common notice period. None of the laws in the other 27 states allow less time, and several require three-day notice before digging. In one state, Louisiana, the requirement is 30 days. We want to emphasize that in cases of



emergency when life, health or property is threatened, the two-day requirement is waived. For example, if a waterline breaks and is flooding the house, or a sewer collapses and is backing up, an emergency exists and the excavator can make repairs immediately.

Presently in Kansas, an underground operator has no legal requirement to respond to an excavator's call, or locate the underground facilities. We believe it is necessary and reasonable that SB 85 requires operators to respond and mark their facilities within the same two-day notification period required of excavators. This bill also requires that facilities must be marked within a 24-inch tolerance zone.

Once it is covered up, it is impossible to know the exact location of an underground facility due to erosion and due to subsequent grading of yards, or plowing and terracing in farm fields. Although it would certainly be more convenient for the excavator to have the exact location of underground facilities marked, the 24-inch tolerance zone is a reasonable compromise. A few states do require 18-inch zones, but generally those state laws only apply to pipelines. The 24-inch zone is the norm in states with excavation legislation that applies to all utilities. Typically the legislated tolerance zones only extend horizontally. This bill has gone a step further at the excavators' request, so that the tolerance zone also includes vertical distances from the underground facility.

As you introduced it, SB 85 represents a series of compromises and a delicate balance that has been reached by many of the various parties affected by the legislation. We do

not believe it is an unreasonable burden for the excavator to make one toll-free telephone call, or for the underground operator to respond in a timely and accurate manner.

As I conclude, I would like to mention that near the end of last session, excavators and operators agreed to the basic compromises which created the delicate balance in this bill. Unfortunately, there was not enough time left in the session to complete action on the bill, which is now before you as Senate Bill 85.

During the summer and fall, I kept in contact with the operators and excavators previously involved and was assured that they could still support this compromise legislation. Now, I understand, some of those interested parties may propose major changes. I must be honest with you and tell you that, at this point, amendments by either operators or excavators could destroy the delicate balance that has been previously achieved in SB 85, and will likely cause some concerned parties to withdraw their support.

I simply want to point this out, so if I have to come back later and withdraw support for SB 85 and ask you to vote against it, you will understand why.

But, I earnestly hope that doesn't happen. I hope you will support the Kansas Damage Prevention Act as it now stands -- as we support it -- without major changes. I believe SB 85 represents the best opportunity for enactment of legislation that will help both the underground facility operators and excavators to protect the lives, health and safety of people throughout Kansas.

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BEFORE THE SENATE TRANSPORTATION AND UTILITIES COMMITTEE  
STATEMENT OF KANSAS TELECOMMUNICATIONS ASSOCIATION  
IN SUPPORT OF SENATE BILL 85

Sen. Morris, Sen. Doyen, and members of the committee. My name is Gary Reser. I am executive vice president of the Kansas Telecommunications Assn. (KTA), formerly the Kansas Telephone Assn.

The KTA supports S. B. 85, enacting the Kansas damage prevention act.

Three telephone systems companies and 26 independent telephone companies are members of the KTA. The 29 KTA member companies have 1,160,928 access lines throughout the state.

The KTA feels S. B. 85 could someday help insure uninterrupted utility service for Kansas consumers through better cooperation and communications between excavators and operators.

S. B. 85 appears to be a reasonable, equitable approach to possibly lessening the liability of both the excavator in Sec. 5(b), Sec. 6, and Sec. 10(b) and the operator in Sec. 10(a).

Provisions of S. B. 85 outlined in Sec. 3(a) and Sec. 5(a) are also supported by the association as reasonable approaches, as they apply to both the 24 inch tolerance zone and the two full working day notification.

Generally speaking, the KTA would like to see a damage prevention act in place in Kansas, monitor its effectiveness in the years ahead, and then continue to work with the legislature on any possible future modifications. The association pledges its help and support to that end.

(over)

ATT. 2  
T&U 2/12/87

Thank you very much, Sen. Morris and members of the committee.

The KTA respectfully requests the committee to recommend the bill favorably for passage.

Respectfully submitted,

*Gary Reser*

Gary Reser, CAE  
Executive Vice President  
Kansas Telecommunications Association

KANSAS CONTRACTORS ASSOCIATION

TESTIMONY ON SENATE BILL 85 BEFORE

THE SENATE TRANSPORTATION AND UTILITIES COMMITTEE

February 12, 1987, Topeka

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 330 heavy, highway and utility contractors and suppliers, and we appreciate the opportunity to speak on SB 85, the proposed Kansas Damage Prevention Act.

I speak today in conditional support of SB 85, or at least the concept of the bill. Let me explain. Since July of 1985, and throughout the 1985 interim session on a similar measure in the House, 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. Our Association would be the first to admit that there have been serious problems with facility damage, some of which have caused extensive damage to property and some even death to personnel. But SB 85 does not establish a true, workable system by which one call would contact all operators about impending construction.

We would like to see all utilities with facilities in Kansas join the Kansas One-Call System, Inc. At the time of this testimony's writing, countless rural water districts, electric cooperatives, small municipal water and electric companies, were not members of Kansas One-Call System, Inc. 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.

However, barring a legislative mandate, we believe SB 85 goes a long way to solve our problems, and we support it in concept. The bill contains certain pluses for excavators which we feel will make our members' job easier in the field. For example, under current law an operator does not have to come out to our jobs in a specified period of time, nor does he have to mark his facilities within a specified and well-defined tolerance zone. SB 85 would give us these benefits.

We also think that it is fair that if an excavator does NOT make his call before digging, and he goes out and digs and damages a facility, then he should pay the operator for any damages to his facility. SB 85 takes care of this situation in Section 10. But to be even more fair, we believe that when an excavator DOES make his call before digging, and the operator comes out and marks the tolerance zone, and a facility is damaged that is outside the tolerance zone, then the operator should pay the excavator for any "down-time" or construction delay expenses. SB 85 does not take care of this situation and we have attached to this testimony some suggested language to rectify this inherent problem. We respectfully request your consideration in amending it into the bill.

Mr. Chairman and members of the committee, I hope from this testimony that you can tell we conditionally support SB 85. First and foremost, we support a truly one-call system, even if utility membership must be legislatively mandated. Foregoing this, we support SB 85 but with an amendment to require 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 we hope you can see our viewpoint on our suggested amendment. If there are any questions, I will gladly attempt an answer.



PROPOSED AMENDMENT BY THE KANSAS CONTRACTORS ASSOCIATION TO SENATE BILL 85

To amend Senate Bill 85 as read as follows:

If any facility encountered by an excavator while performing his work is outside the tolerance zone marked by the operator, and the facility is damaged, the excavator shall be entitled to recover from the operator, as additional costs, all expenses incurred by damaging the facility, including costs associated with delay in construction and costs associated with the excavator being required by the project owner to bypass or work around the incorrectly marked facility. In no event shall the excavator be responsible for any damage to public or private facilities if said damage was caused by the failure of the operator to correctly and properly mark the location of the tolerance zone of the damaged facility.



## KANSAS INDEPENDENT OIL & GAS ASSOCIATION

500 BROADWAY PLAZA • WICHITA, KANSAS 67202 • (316) 263-7297

February 12, 1987

TO: Senate Transportation Committee

RE: SB 85 - Kansas  
Damage Prevention Act

SB 85 is similar to SB 181 (1985) and to HB 2666 (1986) which was introduced as a result of 1985 Interim Study No. 53.

During the 1985 interim study we appeared and offered an amendment to the definition of "excavation" that would exclude "all activities related to the drilling and producing of crude oil and natural gas". The interim committee accepted that recommendation and it appeared in HB 2666 (1986) which was introduced by the Special Committee on Transportation as a result of Interim Proposal No. 53.

SB 85, the bill before you, does not include that exclusion. As a matter of fact, we are told that there was a meeting of contractors and others affected by this legislation and they agreed to take out the oil and gas exclusion. We were not consulted in that decision. As far as we know, legislators were not consulted either.

We didn't believe SB 181 (1985) intend to be extend to oil and gas industry activities and that is the reason the 1985 Interim Study Committee agreed to the exclusion that appeared in HB 2666 (1986).

We are concerned that the definition of "excavation" beginning on line 0027 is so broad that it will include routine activities that are performed in the oil and gas industry involving drilling, servicing, and related work. We note SB 85 does contain an agriculture, railroad, and road and ditch maintenance exclusion.

We determined during the 1985 interim study and subsequent hearings that there was no evidence of underground damage resulting from oil field drilling and producing activities. We don't believe the intent of SB 85 was to include activities performed daily by the oil and gas industry throughout the state.

Therefore, we request that SB 85 be amended in Section 1 (c) on line 0031, by adding an additional exclusion as follows:

"; and all activities related to the drilling and producing of crude oil and natural gas."

Thank you for your consideration.

Donald P. Schnacke

ATT. 4  
T&U 2/12/87

TESTIMONY  
BEFORE THE  
SENATE TRANSPORTATION & UTILITIES COMMITTEE  
BY  
KATHY J. MARNEY  
MECHANICAL CONTRACTORS ASSOCIATION OF KANSAS  
FEBRUARY 11, 1987

Mr. Chairman and Members of the Committee:

My name is Kathy Marney, Executive Director of the Mechanical Contractors Association of Kansas. I am here today to testify on S.B. 85, the Kansas Prevention Act. MCAK supports the concept of the bill but we would like to see the following amendments to the bill before we could fully support S.B. 85.

There are five changes that we would like to see added to the bill. The first amendment we would strongly urge the Committee to consider, is mandating the program so contractors and operators both are protected throughout the state. The contractors I represent, travel around the state a majority of the time, therefore, it is very difficult to know who to call in the area which they are working. Mandating this program would alleviate this problem.

Two other amendments we would support are shortening the response time of the operator. We would like to see a time frame of 24 hours opposed to 48 hours. Also, we feel a tolerance zone on 24 inches is too wide and would like to see it reduced to 18 inches.

Senate Transportation & Utilities  
February 11, 1987  
Mechanical Contractors Association  
of Kansas

Our Association would also support the Kansas Contractors Association's amendment on the recover cost to the excavator if the operator is at fault. Downtime is just as costly to the excavator as it is to the operator, therefore, we feel we should be compensated for wages lost during downtime of the excavator. We would also like to see Section 10. (a) regarding the rebuttable presumption stricken.

My contractors are currently using the One Call System but would like to see these amendments add to S.B. 85 before this Committee takes any action on this bill. Thank you Mr. Chairman and Members of the Committee for allowing me to speak before you today.

TESTIMONY  
BEFORE THE  
COMMITTEE ON TRANSPORTATION AND UTILITIES

February 12, 1987

BY

S. JANE ELLIOTT  
NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION

Mr. Chairman and Members of the Committee:

My name is Jane Elliott, and I am representing the Kansas Chapters of the National Electrical Contractors Association. Our association supports Senate Bill No. 85 on a conditional basis as needed legislation in the construction industry. However, there are some changes which need to be made that would make the bill more effective.

A mandatory one-call system would insure this as a workable bill. If all operators of underground facilities were registered with the same one-call system, a permanent communication link would be in effect for all operators and excavators. Right now a contractor whose business is located in Topeka and has a job in Hamilton County, Kansas may find it extremely difficult to find out who he must call in order to insure no damage is done to an underground facility.

In lieu of a mandatory one-call system, which we feel is necessary, we would offer the following amendment to Section 4, which would require all notification centers to register with the Kansas Corporation Commission. I have given you a copy of the suggested language of the amendment. If this amendment is not workable, we feel it is absolutely necessary that all operators are registered with a single agency. This would enable the contractor to call either K.C.C. or a designated agency -- depending on who the committee chooses to have everyone register with -- and find out who must be contacted in a particular geographical area in order to insure no damage will be done to an underground facility.

ATT. 6  
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We would request the following amendments in Section 1 (1), line 77 "tolerance zone" change to 18" instead of 24". With the electrical devices and sophisticated equipment now available for locating underground facilities, this change would eliminate the excess area of hand-digging and extra time involved in that process.

In Section 3 (a) line 86. Change notice of intent to excavate from 48 to 24 hours. Kansas weather being as unpredictable as it is can be, and is, a factor many times in starting and completing a project. Often a contractor or sub-contractor may be in a position of waiting for excavation in order for the next phase of the project to begin. The 24 hours will expedite progress and a potentially quicker completion date.

We support the amendment offered by Kansas Contractors Association to amend Section 10 on page 5 by adding the new subsection (c).

We feel Senate Bill 85 should enact a mandatory one-call system. We support the concept of Senate Bill 85, because we feel that a damage prevention act is necessary. A mandatory one-call system would insure this as a workable bill.

KANSAS



NATIONAL ASSOCIATION OF  
PLUMBING · HEATING · COOLING CONTRACTORS

PLUMBING, HEATING, COOLING CONTRACTORS ASSOCIATION, INC.

320 LAURA, WICHITA, KANSAS 67211

PHONE 316 / 262-8860

February 12, 1987

SENATE TRANSPORTATION COMMITTEE  
SENATE BILL NO. 85

Mr. Chairman and Members of the Committee:

My name is Helen Stephens and I represent the Kansas Plumbing, Heating, & Cooling Contractors Association, Inc.

We support the concept of Senate Bill 85, but cannot support the bill as it is before you today. The general thrust of the provisions put full liability on the excavator to know what facilities are at a given location and whom to call. We would gladly accept this liability if it was mandated that all regulated utilities, private enterprise operations, municipal, rural and regional utilities, etc., be a part of one-call or a geographical notification center. Only the operators know what facilities are where, and through mandatory participation, the concept would put full responsibility on all operators and excavators.

There are provisions to protect the operator from negligence or willful and wanton conduct of an excavator; but none to protect the excavator who abides by the provisions, yet is given inaccurate markings and has lost time and labor costs on a project. We would support an amendment that addresses this area.

We would like to see an 18" tolerance zone -- not 24", and a revision to the term "non-mechanical digging", which in essence is a shovel. The added cost and time involved would, I'm sorry to say, have to be passed on to the Kansas consumer.

We feel one full working day's notice is sufficient for the operator to locate and mark underground facilities.

Under Section 10, we feel the rebuttable presumption is unnecessary as operators presently have recourse in civil court.

Again, we do support the concept of Senate Bill No. 85, but believe very strongly, that all operators should be an active participant in a notification center.

Thank you, Mr. Chairman, for the opportunity of presenting our views.

ATT. 7  
T&U 2/12/87



PROPOSED AMENDMENT BY THE KANSAS CHAPTERS OF NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION TO SENATE BILL NO. 85

To amend Senate Bill 85, page 3, Section 4, by adding a new subsection (e) as reads as follows:

- (e) Each notification center which is established pursuant to this act shall register with the Kansas Corporation Commission. This registration shall contain the name, mailing address, and telephone number of the notification center, its hours of operation, the operators of underground facilities which are members of and participate in the notification center, and the counties which are within its geographical boundaries.

I am Norman Bowers, Coffey County Engineer, I am representing the Kansas County Engineers Association. Our association recognizes the importance of buried utilities to our modern way of life, and the potential danger to the excavator, and the public and the economic damage to the utility. However our association is opposed to SB-85 because we feel that the present bill is not satisfactory for rural areas, it shifts additional liability to county and township governments, with resultant delay and expense on even minor road work. We feel that the best damage control measure is a well marked and properly installed line, not a phone call to a distant city. This bill would require a notification for such a minor item as installing a signpost, so would be very constraining on our operations.

Most of the utilities in rural areas are located in road right-of-way. So I am speaking to you as a person in charge of building and maintaining roads above these buried utilities. It seems to me that there is a presumption in this bill that the excavator is invading the easement and rights of the utility. However, on rural roads at least, the utilities have intruded onto road right of-ways.

The county road right-of-ways, which started out as road easements now are the location of many public utilities. These utilities normally obtained permission from the Board of County Commissioners instead of acquiring their own easements. Utilities on county right-of-way are not charged any franchise fee, but are

occupying the right-of-way so long as they do not interfere with road travel, maintenance, or construction. The permits were granted by the county with stipulation that the utilities would move at the request of the county if they interfered with a road project. The counties assumed that the lines would be installed so that they would not interfere with maintenance and minor construction. However, telephone lines were installed by contractors without adequate supervision and inspection. Lines that were supposed to be in the backslope of the ditch went around plum thickets, rocks, mud holes, over the top of culverts, from one side of the road to the other, or whatever location the contractor thought would be the easiest. In addition telephone lines were not buried the proper depth, many telephone lines are less than 12 inches deep, certainly few are 24 inches deep as called for in their job specifications. The net result today is that telephone cables are being damaged during minor maintenance operations such as ditch cleaning and culvert replacement because the cable was not installed correctly. We oppose any attempt to legitimize these improperly installed lines and to presume negligence on the part of the county.

It appears that this bill will hold the counties more accountable for damage. The counties will have to protect themselves by requiring that lines close to any project be relocated. I'll have to hire an extra person, and I've estimated that in my county there will be seven times as many relocation projects for the phone company. This will be an expensive bill for the phone company and the county.

The County Engineers would like to work with an interim committee to come up with a bill that would be acceptable to the counties. I don't think the present bill can be revised to something that we could live with unless all mention of counties and road work are deleted. The following is a list of items that I feel should be changed.

1. This bill appears to make the excavator responsible for notifying the utilities, but does not require the utility to clearly mark their lines with warning signs. No backhoe operator will accidentally hit a line if it is properly marked.
2. Pipeline marking tape should be required above all new buried utilities, it is cheap and effective.
3. Bills from utilities for damages should be limited to actual costs, and should not include the 300-400% overhead factor.
4. The utility should be required to locate and expose their facility instead of requiring the excavator to use non-mechanical methods.
5. The definition of excavation is so broad does not allow any road or ditch work, other than maintaining the right of way surface.
6. The section on liability unnecessarily increases liability problems for local governments.
7. If obstructing a road project the utilities should be required to move their facilities in a reasonable time.

\* R E S O L U T I O N \*

WHEREAS a bill has been introduced into the Senate  
Transportation and Utilities Committee and

WHEREAS this bill concerns damage done to buried  
utilities and the financial responsibilities  
and

WHEREAS this bill would create financial hardships on  
the Townships, Cities and Counties and is  
unworkable as written.

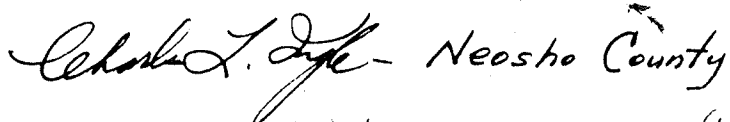
THEREFORE BE IT HEREBY RESOLVED that the Kansas County  
Engineers Association oppose Senate Bill 85.

ss/ KANSAS COUNTY ENGINEERS ASSOCIATION

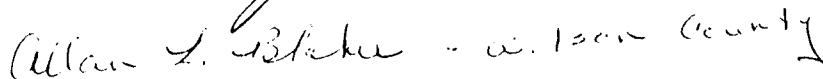
LEGISLATIVE COMMITTEE



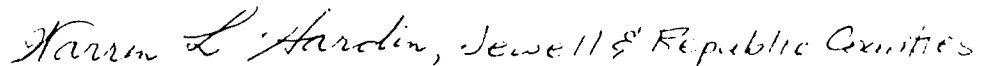
J. H. Fincher Pottawatomie County Engineer



Neosho County



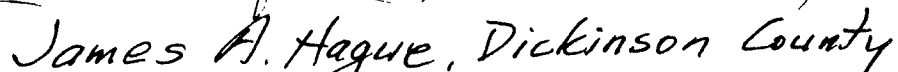
Wilson County



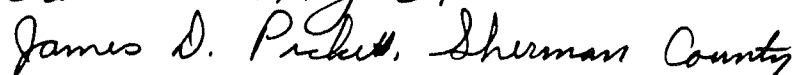
Jewell & Republic Counties



Shawnee County



Dickinson County



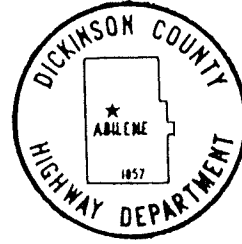
Sherman County

OFFICE OF THE

*Highway Administrator*

Dickinson County Court House  
ABILENE, KANSAS 67410

913/263-3093



SENATE TRANSPORTATION AND UTILITIES COMMITTEE  
Bill Morris, Chairman

SB-85 - 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 6 when defining emergency to health and life that 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 Accommodation 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 SB-85 Section 3 we have to give two days notice before we, as mentioned above, install a stop sign. Then in Section 5 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 can not 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 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 to get their opinions. If you have further questions please call me.

James A. Hague  
Dickinson County Highway Administrator

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TESTIMONY BEFORE  
SENATE TRANSPORTATION AND UTILITIES  
SENATE BILL 85  
BY  
JANET J. STUBBS, EXECUTIVE DIRECTOR  
HOME BUILDERS ASSOCIATION OF KANSAS

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE: MY NAME IS JANET STUBBS, I AM EXECUTIVE DIRECTOR FOR THE HOME BUILDERS ASSOCIATION OF KANSAS AND I AM APPEARING IN OPPOSITION TO SB 85, THE KANSAS DAMAGE PREVENTION ACT.

THE HBAK MEMBERS INVOLVED IN EXCAVATING ACTIVITIES HAVE ALL PRAISED THE CO-OPERATION THEY RECEIVE FROM THE LOCAL UTILITY WORKERS. THEY ADVISE THAT EVERY EFFORT IS MADE BY THE UTILITIES TO LOCATE THEIR UNDERGROUND LINES WITHIN ONE (1) WORKING DAY. THEREFORE, WE ASK THAT THE PROPOSED LEGISLATION BE AMENDED TO PROVIDE FOR "1 WORKING DAY" ON LINE 0087.

WE ASSUME THE LANGUAGE CONTAINED IN LINES 122 & 123 REQUIRES USE OF A SHOVEL POWERED BY HAND. THEREFORE, WE REQUEST LINE 77 BE AMENDED TO "18 INCHES".

LINES 102 & 103 STATES THAT THE "ACT RECOGNIZES THE VALUE OF AND ENCOURAGES AND AUTHORIZES THE ESTABLISHMENT OF NOTIFICATION CENTERS." WITHOUT A MANDATORY MEMBERSHIP, IT APPEARS TO OBTAIN VERY LITTLE BENEFIT FOR THE EXCAVATOR IN THAT THEY MUST STILL DETERMINE WHAT UTILITY LINES ARE IN THE AREA AND WHICH COMPANIES TO CALL PRIOR TO EXCAVATION.

THE TOPEKA EXCAVATORS CONTACTED ADVISE THE "DIG-SAFE" SERVICE WAS PUT INTO EFFECT LAST APRIL IN THIS CITY AND FIND IT VERY INCONVENIENT.

IT IS STILL NECESSARY TO TALK WITH EACH OPERATOR LOCALLY PRIOR TO EXCAVATION AND THE EMPLOYEES AT THE 800 NUMBER LOCATION DO NOT KNOW THE AREA IN ANOTHER CITY SO THE EXCAVATOR MUST WAIT ON THE PHONE WHILE THIS IS DETERMINED.

IT HAS BEEN STATED THAT THE CONCEPT SOUNDS GOOD BUT JUST DOES NOT OPERATE AS EFFICIENTLY AS WHEN DEALING WITH THE LOCAL EMPLOYEES DIRECT.

HBAK OPPOSES THE LANGUAGE IN LINES 165 & 166 REGARDING REBUTTABLE PRESUMPTION.

ALTHOUGH WE DO NOT CONDONE DELIBERATE DAMAGE TO ANY OPERATOR'S UNDERGROUND FACILITIES, WE BELIEVE OPERATORS CURRENTLY HAVE THE ABILITY TO RECOVER DAMAGES AND, THEREFORE, REQUEST AN AMENDMENT STRIKING THIS PROVISION.

HBAK WOULD SUPPORT THE CONCEPT PROPOSED BY KCA WHICH PERMITS DAMAGES TO THE EXCAVATOR FROM THE OPERATOR'S INABILITY TO PROPERLY MARK THE FACILITY.



IN CONCLUSION, HBAK OPPOSES THE CONCEPT AS CURRENTLY PROPOSED DUE TO THE INEFFICIENCY OF THE OPERATION EXPERIENCED THUS FAR. IF THIS COMMITTEE BELIEVES IT IS NECESSARY TO RECOMMEND THIS LEGISLATION, WE URGE ADOPTION OF THE PROPOSED AMENDMENTS. AS WRITTEN, THIS BILL BENEFITS ONLY THE OPERATORS AND PERHAPS THE KCC IN OBTAINING FEDERAL MONIES.

STATEMENT OF THOMAS E. GLEASON  
TO THE  
SENATE TRANSPORTATION AND UTILITIES COMMITTEE  
ON BEHALF OF INDEPENDENT TELEPHONE COMPANY GROUP, ASSARIA, ET AL.

Mr. Chairman and Members of the Committee:

My name is Thomas E. Gleason. I am a practicing attorney of Ottawa, Kansas and appear as a registered lobbyist on behalf of the Independent Telephone Company Group, Assaria, et al., which is a group of eighteen small rural oriented telephone public utilities of the State of Kansas. The group has participated in representation before the legislature for several sessions and we have previously appeared before this committee.

We appear today in support of Senate Bill 85. The provisions of this bill are intended to supplement and define the role of "Kansas One Call" which is an organization formed by most of the regulated public utilities of the State of Kansas for the purpose of having a central point of contact available to all contractors to assist in avoiding damage to utility facilities during construction projects throughout the state. As you are aware public utilities are given the right under law to utilize public roads for the purpose of placing utility facilities. The right to place facilities on public way results in substantial savings in the costs of construction which savings are passed on to the general body of rate payers. Over the years we have experienced considerable damage to utility facilities occasioned by construction projects either public or private who proceed to perform

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construction on public rights of way without detail information as to the location of the utility facilities in the area.

The "Kansas One Call" program was developed over several years and at substantial expense to the utilities as a means of minimizing such damage in the future. Under the program all contractors have available to them a central point of contact through which they can learn the location of all public utility facilities in the area under construction. Through coordination with the public utilities the contractors are able to avoid or minimize damage to the utility facilities and interruption of services to the public. Senate Bill 85 is designed to fully implement the "Kansas One Call" program by recognizing the organization as a central point of contact for contractors. The bill provides for substantial savings to contractors in their ability to utilize the "Kansas One Call" services.

Although the small telephone utilities for whom we speak are not in full agreement with the language of Senate Bill 85, we are satisfied that it is the best bill available to us which can be supported by both the utilities and the contractors; and therefore we support the passage of Senate Bill 85 with only one reservation.

We believe the bill in its present form might be interpreted to place an undue burden on the utility companies to physically

Statement Senate Bill 85

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protect their facilities. If in fact it develops that the bill does impose costly burdens on the utilities to accomplish physical protection of their facilities we reserve the right to come back to the legislature, inform the legislature and seek modification of the language. In the interim period we believe that Senate Bill 85 is a big step in the right direction and with the reservation stated we support passage of Senate Bill 85.