

Approved 2/25/87
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. ~~xxxx~~ on February 20, 1987 in room 254-E of the Capitol.

All members were present except: Sen. Francisco, Sen. Frey, Sen. Hoferer and Sen. Martin.

Committee staff present:

Hank Avila, Legislative Research Department
Ben Barrett, Legislative Research Department
Bruce Kinzie, Revisor
Tom Servern, Legislative Research Department
Louise Cunningham, Committee Secretary
Conferees appearing before the committee:

On a motion from Sen. Hayden and a second from Sen. Thiessen the Minutes of February 12, 1987 were approved. Motion carried.

Distributed to members were copies of the Cost Allocation Study submitted by Deb Miller, Director of Planning & Development, Department of Transportation, with a letter of transmittal dated February 12, 1987. It includes tables which compares the results of the Kansas Study with the results of the most recent federal study and the 17 states on file. It also includes the flipchart used during the January 29th presentation. A copy is attached. (Att. 1).

Also distributed to the Committee was a letter dated February 12, 1987 from David A. Herrman, Herrman's Excavating, Inc. in which he stated that the original method of contacting individual utility companies was more practical and effective than the "DIG SAFE SYSTEM". A copy of his letter is attached. (Att. 2).

Sen. Bond had a request for a bill which would require service stations who have both self-service and full service to provide gas in the self-service lane at the lower price to those who display the handicapped placard. It was requested by a friend who is deeply involved with people who have had polio. Amoco would like to testify on this. A copy of his proposed bill is attached. (Att. 3). 7RS 0981.

A motion was made by Sen. Vidricksen and was seconded by Sen. Thiessen to introduce the proposed bill as a Committee Bill. Motion carried.

Bruce Kinzie said he had received a request from Sen. Burke to draft a bill to have specialized license plates for special groups such as alumni associations.

A motion was made by Sen. Bond and was seconded by Sen. Doyen to have such a bill drafted and to submit it as a Committee Bill. Motion carried.

Bruce Kinzie said he had received a request dealing with auto salvage dealers. There should be a certificate of compliance and should have the approval of the local city or authority. Dealers now go to local units of government and say they have a license to operate. A motion was made by Sen. Bond and was seconded by Sen. Hayden to introduce such a bill as a Committee Bill. Motion carried.

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

Bruce Kinzie explained the amendments which were passed yesterday in Committee. He had a balloon copy of the bill. (Att. 4).

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES,
room 254-E, Statehouse, at 9:00 a.m./~~p.m.~~ on February 20, 1987

There was discussion about the fee the county clerk should charge for the service and it was suggested that \$5.00 was too high and a \$2.50 fee would be more reasonable. A motion was made by Sen. Thiessen and was seconded by Sen. Hayden to set the fee at \$2.50. Motion carried.

A motion was made by Sen. Vidricksen and was seconded by Sen. Doyen to recommend S.B. 85, as amended, favorable for passage. Motion carried.

The Chairman told the Committee that all remaining bills had been scheduled or have similar bills in the House. He encouraged the Committee to be thinking of amendments and changes to S.B. 137. He would not bring it up right away but when we do we will give it full committee consideration.

Meeting was adjourned at 10:00 a.m.

SENATE TRANSPORTATION AND UTILITIES COMMITTEE

Date 2-20-87 Place 254-E Time 9⁰⁰

GUEST LIST

NAME

ADDRESS

ORGANIZATION

Shelley Sutton

Topeka

Ks. Engineering Society

Robert Ciova

Lawrence

Sen. Allen

Rick Kready

Topeka

KPL Gas Service

TREVA POTTER

TOPEKA

PEOPLES NAT. GAS

KANSAS DEPARTMENT OF TRANSPORTATION

DOCKING STATE OFFICE BUILDING — TOPEKA, KANSAS 66612—1568
(913) 296 — 3566



HORACE B. EDWARDS, Secretary of Transportation

MIKE HAYDEN, Governor

February 12, 1987

The Honorable Bill Morris, Chairperson
Senate Transportation and Utilities Committee
Room 143-North
Statehouse
Topeka, Kansas 66612

Dear Senator Morris:

The attached tables are being furnished in response to questions asked following KDOT's January 29, 1987 presentation to the Senate Transportation Committee regarding the Kansas Cost Allocation Study. Table 1 compares the results of the Kansas study with the results of the most recent federal study and the 17 state studies we have on file. For each study, the equity (revenue/cost) ratios are shown for three generalized vehicle classes.

There is considerable variation in the way the states grouped vehicles into classes. Some states broadly classified traffic into two types of vehicles, "basic" and "heavy", whereas other states employed gross weight and/or axle configurations to classify traffic. Those states which used "basic" and "heavy" classification groups varied in their definition of the terms. For instance, some states considered only automobiles as "basic" vehicles, while other states considered both automobiles and light weight small trucks as "basic". Similarly, the definition of "heavy" differed among the states. In several states, a vehicle was considered heavy if it exceeded a given weight. In other states, not only was weight considered in classifying a heavy vehicle, but also the number of axles and/or tires.

In addition to the discrepancies in vehicle classifications, differences also existed in the types of costs and revenues considered. For example, one state, considering the costs of highway construction in a broad sense, included external costs such as noise and air pollution. Another state indicated that social or environmental costs were not included in their analysis. Most states, however, did not specifically identify the scope of costs or revenues covered in their study.

The results of two of the state studies listed, Iowa and Virginia, indicate that none of the vehicle groups were paying their fair share. This paradox is a result of the methodology employed. Iowa assigned costs to both highway users and landowners, with highway users as a whole only responsible for 69% of the total costs. Virginia, due to lack of data at the time of publication, compared 1978 costs to 1976 revenues for some of the vehicle classes.

ATT: 1
7470 2/20/87

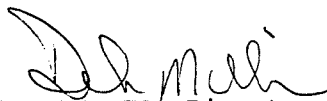
Overall, there was very little uniformity among the states in emphasis, coverage, and approach. This table should therefore only be used as a representative comparison of the results of the Kansas study with that of other state studies and the 1982 federal study.

Another question was asked regarding the number of illegal trucks operating on the state highway system. In order to provide some idea of the number of overweight vehicles, Table 2 shows the number and dollar amount of fines for vehicles cited by the Kansas Motor Carrier Inspection Bureau for the years 1982 through 1986. These figures comprise weighings at permanent scale facilities where the vast majority of vehicles are in compliance with weight regulations. Therefore, these figures may or may not be representative of the actual number of overweight trucks operating on the state highway system.

Another source of information concerning overweight vehicles on the state highway system are the truck weight surveys conducted by KDOT. Table 3 lists the numbers of trucks and weight violations observed during the truck weight surveys conducted in the years 1981 through 1985. These observations occurred at several locations throughout the state and represent several classes of roads (interstate, principal arterial, minor arterial, etc.). To avoid biasing the sample, truck weight surveys are conducted without enforcement. As a result, the figures gathered through these surveys show a higher percentage of overweights than the figures provided by the Kansas Motor Carrier Inspection Bureau.

The last attachment is a reduced copy of the pages of the flipchart used during the January 29th presentation. I am enclosing thirty copies of the tables and the reduced flipchart. If we can provide additional information, please let me know.

Sincerely,



DEB MILLER, Director
Division of Planning & Development

cc: Horace B. Edwards, Secretary of Transportation
Edward DeSoignie, Policy Coordinator

Table 1

Cost Allocation Study Results

	EQUITY RATIOS		
	Passenger Vehicles	Single-Unit Truck	Combination-Unit Truck
Arkansas (1978)	1.00	1.15	0.98
Colorado (1981)	1.22	1.24	0.56
Connecticut (1982)	1.11	1.61	0.63
Florida (1979)	1.04	0.91	0.51 **
Georgia (1979)	1.03	0.66	0.44 **
Indiana (Base Period)	1.24	1.13	0.62
(Budget period)	1.25	1.24	0.54
Iowa (1983)	0.81 *	—	0.79 ***
Kentucky (1982)	1.57	—	0.57 ***
Maine (1982)	1.02	1.16	0.97
Maryland (1982)	1.17	0.83	0.56
Missouri (1978)	1.05	0.84	0.87
Nevada (1984)	1.13	0.96	0.53
North Carolina (1983)	0.96	2.14	0.78
Ohio (1982)	0.90	2.25	0.35
Oregon (1980)	1.00	1.25	0.92
Virginia (1980)	0.37 *	—	0.47 ***
Wisconsin (1982)	0.94	1.40	0.89
Federal (1982)	1.10	1.50	0.60
Kansas (1985)	1.12	0.93	0.79

* Automobiles Only
 ** 5 or more axles
 *** All trucks

Sources:

Purdue University in cooperation with the Indiana State Highway Commission, Final Report, State Highway Finance and User Taxation in Indiana, October 5, 1976.

R.J. Hansen Associates, Inc., Arkansas Financial Program with Cost Allocation, December 1978.

Wilbur Smith and Associates, Financial Responsibilities for Missouri Highways, prepared for the Missouri State Highway Commission, 1978.

Nevada Department of Transportation, Highway Cost Allocation 1984, prepared for the 1985 Legislature of the state of Nevada, July 1984.

Revenue Resources and Economic Commission, Report on Transportation Taxation in Virginia to the Governor and the General Assembly of Virginia, Senate Document No. 9, Commonwealth of Virginia, Richmond, 1980

David J. Forkenbrock, Methods for Improving Highway Financing in Iowa, Institute of Urban and Regional Research, The University of Iowa, February 1983.

Table 2

Trucks Fined for Violation
by the
Kansas Motor Carrier Inspection Bureau

Fiscal Year	Total Weighed* (Number)	Weight Fines (Number)	Weight Fines (Percent)	Weight Fines** (Dollars)	Total Fines# (Number)	Total Fines (Percent)	Total Fines** (Dollars)
1982	769,286	3,378	0.4%	\$304,542	8457	1.1%	\$435,614
1983	929,424	2,760	0.3%	\$344,258	5425	0.6%	\$480,678
1984	862,754	3,683	0.4%	\$363,655	5640	0.7%	\$547,157
1985	722,511	2,943	0.4%	\$312,353	8,242	1.1%	\$507,262
1986	834,354	3,122	0.4%	\$347,552	8,545	1.0%	\$598,839

* Total weighed at permanent stations and by portable and semi-portable scales

** Includes court costs

All violations including overweight, overwidth, registration violations, trip fuel tax, etc.

Table 3

Overweight Vehicles Identified
during KDOT
Truck Weight Surveys

Year	Number of Trucks Weighed	GVW Violations (Number)	GVW Violations (Percent)	Total Weight Violations (Number)	Total Weight Violations (Percent)
1980-1981	1651	37	2%	139	8%
1982-1983	1654	32	2%	103	6%
1984-1985	1816	50	3%	113	6%

Highway Cost

ALLOCATION STUDY

A TAX EQUITY QUESTION.

DOES EVERYONE PAY
THEIR FAIR
SHARE?

THREE COMPONENTS

1. HOW MUCH SHOULD THEY PAY? (COST ALLOCATION)
2. HOW MUCH DO THEY PAY? (REVENUE ATTRIBUTION)
3. HOW DO THEY COMPARE? (EQUITY)

BACKGROUND

NATIONAL STUDY

- MANDATED BY CONGRESS,
1978 STAA

- COMPLETED 1982

- EQUITY RESOLUTION IN
1982 STAA

BACKGROUND

STATE STUDIES

19

STATES COMPLETED
STUDIES

2

STATES IN
PROCESS

BACKGROUND

KANSAS STUDY-

- 1979 LEGISLATIVE -

DETERMINE IMPACT OF
HEAVY VEHICLE ON PAVEMENT

- 1981 INTERIM - KDOT TO DC
MAJOR COST ALLOCATION
STUDY -

- 1985 - STUDY DRAFT
COMPLETE (SEPTEMBER)

COST ALLOCATION

HOW TO ALLOCATE
HIGHWAY EXPENDITURES
TO THE VARIOUS VEHICLE
GROUPS FOR THE FOUR
YEAR STUDY PERIOD

FY 1985 - FY 1988

Highway EXPENDITURES

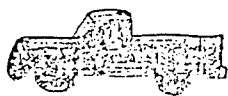
- Construction
- Maintenance
- Administration
- Engineering
- Vehicle Weight Enforcement
- Vehicle Registration

CARS



GVW ESAL
3,000 0.0002

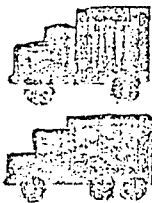
PICKUPS/
VANS



12,000 0.06

TRUCKS,

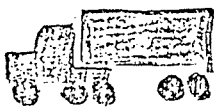
SINGLE UNIT
S2 S3



33,000 1.9
47,000 1.4

TRUCKS,

COMBINATION
UNIT
3-52



80,000 2.3

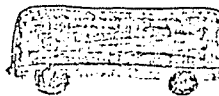
OTHER

2-51-2



80,000 4.0

BUSES



MOTORCYCLES



Types of Costs

* COMMON

* ATTRIBUTABLE

* OVERHEAD

Common COSTS

SHARED BY ALL
VEHICLES EQUALLY
ON THE BASIS OF
USE.

Attributable COSTS

SHARED BY VEHICLE
CLASSES ON BASIS
OF VEHICLE
CHARACTERISTICS

* WEIGHT

* WIDTH

* AXLE SPACINGS

Overhead

COSTS

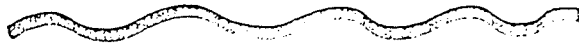
SHARED BY ALL
VEHICLE CLASSES





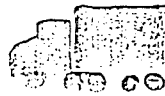



ON BASIS OTHER

THAN USE OR VEHICLE
CHARACTERISTICS.

Vehicle
TYPE

Costs
SHARE



CARS		<u>39</u>
PICK-UPS/VAN		<u>19</u>
SINGLE UNIT ^{S2}		<u>10</u>
SINGLE UNIT ^{S3}		<u>10</u>
COMBINATION UNIT	 3-S2	<u>31</u>
COMBINATION UNIT	 2-S1-2	<u>31</u>
OTHER		
BUSES		<u>1</u>
MOTORCYCLES		<u>1</u>





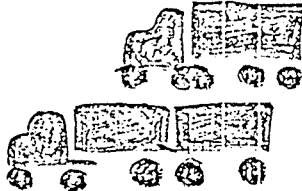


REVENUE ATTRIBUTION

HOW MUCH DO EACH OF
THE VEHICLE GROUPS
CONTRIBUTE TO THE
TOTAL REVENUE.

REVENUE

- MOTOR FUEL TAX
- VEHICLE REGISTRATION
- SALES TAX TRANSFER
- MISCELLANEOUS

PERCENT ATTRIBUTED BY TAX

VEHICLE GROUPS		MOTOR FUEL TAX	VEHICLE REGISTRATION	SALES TAX	MISC.	TOTAL
CARS		<u>43%</u>	<u>35</u>	<u>69</u>	<u>61</u>	<u>4*</u>
PICK-UPS/ VANS		<u>24%</u>	<u>17</u>	<u>25</u>	<u>22</u>	<u>2</u>
SINGLE UNIT TRUCKS	 	<u>10%</u>	<u>10</u>	<u>1</u>	<u>5</u>	<u>9</u>
COMBINATION UNIT TRUCKS		<u>22%</u>	<u>36</u>	<u>0.2</u>	<u>7</u>	<u>24</u>
OTHER	BUS 	<u>1%</u>	<u>2</u>	<u>5</u>	<u>5</u>	<u>2</u>
	MOTORCYCLE	<u>100%</u>	<u>100%</u>	<u>100%</u>	<u>100%</u>	<u>100%</u>

EQUITY

HOW DO THE REVENUES
ATTRIBUTABLE TO EACH
CLASS COMPARE TO THE
COST ALLOCATED TO EACH
GROUP :

REVENUE ATTRIBUTABLE

COSTS ALLOCATED

WHERE EQUITY = 1.0
UNDERPAYMENT = < 1.0
OVERPAYMENT = > 1.0

BETWEEN GROUP EQUITY

DOES EACH GROUP PAY ITS SHARE.

VEHICLE

EQUITY VALUE

* CARS



1.13

* PICKUPS/VANS



1.11

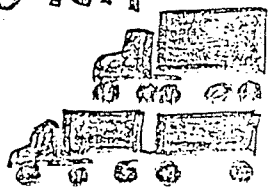
* TRUCKS, SINGLE UNIT



0.93

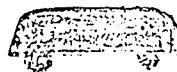
* TRUCKS, COMBINATION

UNIT



0.79

* OTHER BUS



MOTORCYCLE



1.15

WITHIN GROUP EQUITY

DO ALL THE VEHICLES WITHIN
A GROUP PAY UNIFORM
SHARE

OUTCOME

LOW MILEAGE VEHICLES
GENERALLY PAY A GREATER
SHARE THAN HIGH
MILEAGE VEHICLES.

PROBLEMS & ISSUES

1. ARE STUDY TECHNIQUES VALID

+ KDOT INTERNAL CONSENSUS

+ REVIEWED BY MULTIPLE GROUPS.

- AMERICAN ASSOCIATION OF RAILROADS

- AMERICAN TRUCKING ASSOCIATION

- KANSAS MOTOR CARRIER ASSOCIATION

- AMERICAN AUTOMOBILE ASSOCIATION

- OTHER HIGHWAY AGENCIES (STATES
FEDERAL)

+ LITTLE DEVIATION FROM FEDERAL STUDY.

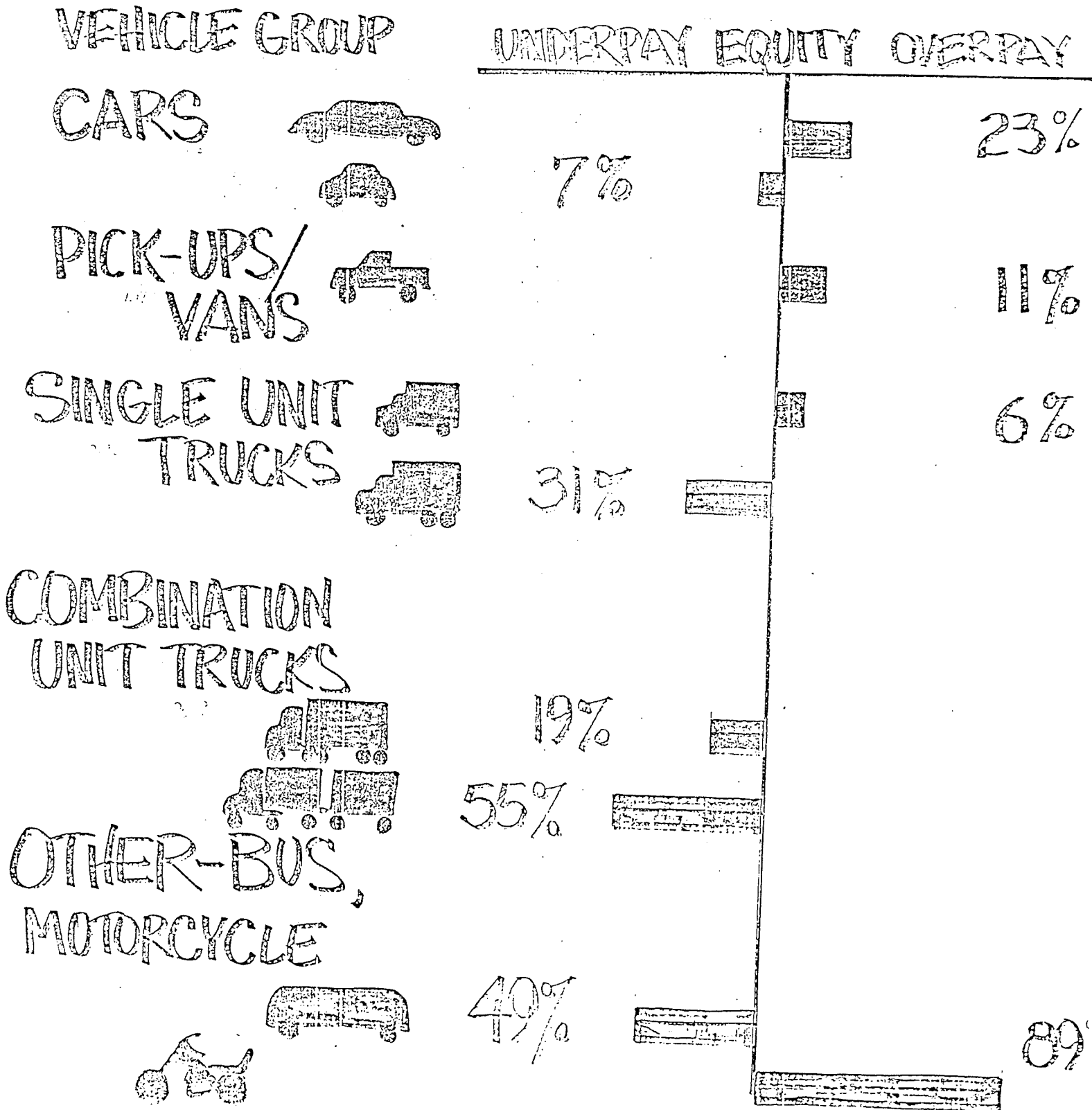
2. DATA ASSIGNMENTS TO VEHICLE GROUPS.

- VEHICLE REGISTRATIONS (REVENUE) ARE BY WEIGHT INSTEAD OF BY VEHICLE TYPE (costs)

3. SALES TAX TRANSFER

- * PURCHASES BY UTILITIES ARE EXEMPT FROM SALES TAX.
- * INTERSTATE COMMON CARRIER TRUCKING FIRMS ARE CLASSIFIED AS UTILITIES.
- * INTERSTATE LEASES FOR COMMON CARRIERS ARE EXEMPT FROM SALES TAX.

4. STUDY RESULTS



HERRMAN'S EXCAVATING, Inc.

1459 JEFFERSON TOPEKA, KANSAS 66607

PHONE 233-4146

February 12, 1987

"TO WHOM IT MAY CONCERN"

I, David Herrman with Herrman's Excavating, Inc. of Topeka, Kansas have been asked by Janet Stubbs with Kansas Home Builders Association to express my views toward the "DIG SAFE SYSTEM" now in effect.

As an Excavating Contractor, we require the need for utility locates daily. My first opinion of the "DIG SAFE SYSTEM" compared to the original way we requested was "if it's not broke, don't fix it"!!!

I still believe that our original method of contacting individual utility companies was more practical and effective than the "DIG SAFE SYSTEM"

At the present time, we have to give "DIG SAFE" 48 hours notice prior to performing any work. This is not practical in emergency situations which arise quite often in sewer and street failures.

"DIG SAFE" only contacts KPL, Gas Service Company and Telephone Company. They do not call the Water Department or Cable TV. This might cause some confusion for someone that isn't familiar with the formalities.

When we place a call to "DIG SAFE" we are greeted with an operator in Wichita, Kansas that is not familiar with addresses and locations in Topeka, Kansas. We then must go thru a question and answer session which is quite lengthy. After all the information is gathered, we need to request a call-back from the Utility Companies that "DIG SAFE" has contacted, to set up a time to meet on the job site. Often the call-backs are returned in a 2 hour time lapse, causing us to stand-by and wait.

We have also had problems with getting Utility Lines re-marked. When we have called "DIG SAFE" and asked for only one particular Utility Company to go back out to the job site, we wind up getting everyone that "DIG SAFE" normally contacts, thus causing a waste of time and money.

I have been told by many employees of the Utility Companies, that they too were unhappy with the "DIG SAFE SYSTEM"

In closing, I would like to say that I am sure the intent of the "DIG SAFE SYSTEM" was to improve the old system. However, I had not heard of as many complaints before "DIG SAFE" began.

I am aware that going back to the original way might appear to be a negative step, but it might be the best step for us to take.

IF COCA-COLA CAN DO IT, SO CAN WE.!!!

Thank You,

David A. Herrman

ATT. 2
T&U 2/20/87

SENATE BILL NO. _____

By

AN ACT

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

Section 1. Every dealer engaged in the retail sale of motor-vehicle fuels at any service station providing facilities for both self-service and full-service sales shall require any attendant whose duties include the dispensing of motor-vehicle fuels at full-service facilities to dispense motor-vehicle fuels into any motor vehicle parked at a self-service facility which displays a license plate issued to a disabled veteran pursuant to K.S.A. 1986 Supp. 8-161 or a license plate or placard issued to a handicapped person pursuant to K.S.A. 1986 Supp. 8-1,125. The price charged for such motor-vehicle fuel shall be the price charged the general public for motor-vehicle fuels dispensed at such self-service facility. Such service shall be provided only during hours in which full-service sales are offered to the general public and such attendant shall not be required to perform other services which are offered only at full-service facilities.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

ATT. 3
T&U 2/20/87

SENATE BILL No. 85

By Committee on Transportation and Utilities

1-27

0017 AN ACT enacting the Kansas damage prevention act.

0018 *Be it enacted by the Legislature of the State of Kansas:*

0019 Section 1. As used in this act:

0020 (a) "Damage" means any impact or contact with an under-
0021 ground facility, its appurtenances or its protective coating, or any
0022 weakening of the support for the facility or protective housing
0023 which requires repair;

0024 (b) "emergency" means any condition constituting a clear
0025 and present danger to life, health or property, or a customer
0026 service outage;

0027 (c) "excavation" means any operation in which earth, rock or
0028 other material on or below the ground is moved or otherwise
0029 displaced by any means, except tilling the soil, or railroad or road
0030 and ditch maintenance that does not change the existing railroad
0031 grade, road grade or ditch flowline;

0032 (d) "excavator" means any person who engages directly in
0033 excavation activities within the state of Kansas;

0034 (e) "facility" means any underground line, system or struc-
0035 ture used for producing, gathering, storing, conveying, transmit-
0036 ting or distributing communication, electricity, gas, petroleum,
0037 petroleum products, hazardous liquids, water, steam, sewage or
0038 any other similar commodities;

0039 (f) "marking" means the use of stakes, paint or other clearly
0040 identifiable materials to show the field location of underground
0041 facilities, in accordance with the resolution adopted August,
0042 1984, by the utility location coordination council of the American
0043 public work association;

0044 (g) "notification center" means a center operated by an orga-
0045 nization which has a minimum of five underground operators

, or all operations related to exploration, drilling and production
of crude oil and natural gas

0046 participating, and has as one of its purposes to receive notifica-
0047 tion of planned excavation in a specified area from excavators
0048 and to disseminate such notification of planned excavation to
0049 operators who are members and participants;

0050 (h) "operator" means any person who owns or operates an
0051 underground facility, except for any person who is the owner of
0052 real property wherein is located underground facilities for the
0053 purpose of furnishing services or materials only to such person or
0054 occupants of such property;

0055 (i) "preengineered project" means a public project wherein
0056 the public agency responsible for the project, as part of its
0057 engineering and contract procedures, holds a meeting prior to
0058 the commencement of any construction work on such project in
0059 which all persons, determined by the public agency to have
0060 underground facilities located within the construction area of the
0061 project, are invited to attend and given an opportunity to verify
0062 or inform the public agency of the location of their underground
0063 facilities, if any, within the construction area and where the
0064 location of all known and underground facilities are duly located
0065 or noted on the engineering drawing as specifications for the
0066 project;

0067 (j) "permitted project" means a project where a permit for the
0068 work to be performed must be issued by a state or federal agency
0069 and, as a prerequisite to receiving such permit, the applicant
0070 must locate all underground facilities in the area of the work and
0071 in the vicinity of the excavation and notify each owner of such
0072 underground facilities;

0073 (k) "person" includes any individual, partnership, corpora-
0074 tion, association, franchise holder, state, city, county or any
0075 governmental subdivision or instrumentality of a state and its
0076 employees, agents or legal representatives;

0077 (l) "tolerance zone" means the area within 24 inches of the
0078 outside dimensions in all vertical and horizontal directions of an
0079 underground facility;

0080 (m) "working day" means every day, except Saturday, Sun-
0081 day or a legally proclaimed local, state or federal holiday.

0082 Sec. 2. An excavator shall not engage in excavation near the

0083 location of any underground facility without first having ascer-
 0084 tained, in the manner prescribed in this act, a location of all
 0085 underground facilities in the proposed area of the excavation.

0086 Sec. 3. (a) An excavator shall serve notice of intent of ex-
 0087 cavation at least two full working days, but not more than 10
 0088 working days before commencing the excavation activity, on
 0089 each operator having underground facilities located in the pro-
 0090 posed area of excavation.

0091 (b) The notice of intent of excavation shall contain the name,
 0092 address and telephone number of the person filing the notice of
 0093 intent, the name of the excavator, the date the excavation activity
 0094 is to commence and the type of excavation being planned. The
 0095 notice shall also contain the specific location of the excavation if
 0096 it is to take place within the city limits or the specific quarter
 0097 sections in all other areas within the state.

0098 (c) The provisions of this section shall not apply to a preen-
 0099 gineered project or a permitted project, except that the excava-
 0100 tors shall be required to give notification in accordance with this
 0101 section prior to starting such project.

0102 Sec. 4. (a) This act recognizes the value of and encourages
 0103 and authorizes the establishment of notification centers.

0104 (b) Upon the establishment of a notification center in com-
 0105 pliance with this act, notification, as required by section 3, to
 0106 operators who are members of the notification center shall be
 0107 given by notifying the notification center by telephone the
 0108 content of such notification as required by section 3.

0109 (c) All operators who have underground facilities within the
 0110 defined geographical boundary of the notification center shall be
 0111 afforded the opportunity to become a member of the notification
 0112 center on the same terms as the original members.

0113 (d) A suitable record shall be maintained by the notification
 0114 centers to document the receipt of notices from excavators as
 0115 required by this act.

0116 Sec. [5] (a) An operator served with notice shall, in advance of
 0117 the proposed excavation, unless otherwise agreed between the
 0118 parties, by marking, flagging or by other acceptable methods,
 0119 inform the excavator of the tolerance zone of the underground

Sec. 5. All operators having underground facilities within a county shall have on file with the county clerk in such county, a notice that such operator has underground facilities located within the county and the address and the telephone number of the person or persons from whom information about the location of such underground facilities may be obtained, unless an operator is a member of or a participant in a notification center pursuant to this act.

Sec. 6. (a) The county clerk shall charge and collect fees from all operators filing notices pursuant to section 5 of this act in the amount of \$25 for filing of each notice.

(b) All fees charged by the county clerk pursuant to this act shall be due and payable to the general fund of the county in which they are assessed on January 1 of each year.

(c) The county clerk shall maintain a current list of all operators on file pursuant to this act and shall make copies of such lists available upon payment of a fee not to exceed \$5 per request.

0120 facilities of the operator in the area of the planned excavation.
 0121 Such marking shall be done in the manner as to reasonably
 0122 enable the excavator to employ nonmechanical digging or other
 0123 means of establishing the location of the underground facilities.
 0124 If the location of the underground facilities cannot be estab-
 0125 lished, the excavator shall inform the operator who shall
 0126 promptly provide the necessary assistance to determine the
 0127 location of the underground facilities in advance of the excava-
 0128 tion activity.

0129 (b) If the operator notifies the excavator that it has no under-
 0130 ground facilities in the area of the planned excavation, or if the
 0131 operator fails to respond, or improperly marks the tolerance zone
 0132 for the facilities, the excavator may proceed and shall not be
 0133 liable for any direct or indirect damages resulting from contact
 0134 with the operator's facilities; however, nothing in this act is
 0135 meant to hold any excavator harmless from liability in those
 0136 cases of gross negligence of willful and wanton conduct.

0137 Sec. [6] In the case of an emergency involving danger to life,
 0138 health or property, or which requires immediate correction in
 0139 order to continue the operation of an industrial plant, or to assure
 0140 the continuity of public utility service, excavation, maintenance
 0141 or repairs may be made without using explosives, if notice and
 0142 advice thereof, whether in writing or otherwise, is given to the
 0143 operator or notification center as soon as reasonably possible.

0144 Sec. [7] This act shall not be construed to authorize, affect or
 0145 impair local ordinances, charters or other provisions of law
 0146 concerning excavating or tunneling in a public street or highway
 0147 or private or public easement.

0148 Sec. [8] Upon receiving the information, as provided in sec-
 0149 tion [5] an excavator shall exercise reasonable care as may be
 0150 necessary for the protection of any underground facility in and
 0151 near the construction area when working in close proximity to
 0152 any such underground facility.

0153 Sec. [9] When any contact with or damage to any under-
 0154 ground facility occurs, the operator shall be informed immedi-
 0155 ately by the excavator. Upon receiving such notice, the operator
 0156 shall dispatch personnel to the location as soon as practicable to

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11.

0157 provide necessary temporary or permanent repairs of the dam-
0158 age. If a serious electrical short is occurring, or dangerous fluids
0159 or gases are escaping from a broken line, the excavator shall
0160 immediately inform emergency personnel.

12.

0161 Sec. 10 (a) In a civil action in a court of this state when it is
0162 shown by competent evidence that damage to the underground
0163 facilities of an operator resulted from excavation activities and
0164 that the excavator responsible for giving notice of intent to
0165 excavate failed to give such notice, there shall be a rebuttable
0166 presumption that the excavator was negligent for failing to give
0167 such notice.

0168 (b) The provisions of subsection (a) shall not apply if the
0169 operator whose underground facilities are damaged fails to par-
0170 ticipate in a notification center.

file with the county clerk or to

0171 Sec. 11 This act shall be known and may be cited as the
0172 Kansas damage prevention act.

13.

0173 Sec. 12 If any provision of this act or the application thereof
0174 to any person or circumstance is held invalid, the remainder of
0175 the act and the application of such provision to other persons or
0176 circumstances shall not be affected thereby.

14.

0177 Sec. 13 This act shall take effect and be in force from and
0178 after its publication in the statute book.

15.