Approved 3-6-1992
Date

MINUTES OF THE Senate COMMITTEE ON Energy and Natural Resources.

The meeting was called to order by Senator Ross Doyen at
Chairperson

8:06 a.m./~~p.m.~~ on March 4, 19 92 in room 423-S of the Capitol.

All members were present except: All members were present.

Committee staff present:
Pat Mah, Legislative Research Department
Raney Gilliland, Legislative Research Department
Don Hayward, Revisor of Statutes
Lila McClaflin, Committee Secretary

Conferees appearing before the committee:

Laura McClure
Shawn McGrath, Kansas Natural Resources Council
Bill Bryson, Directer of Oil and Gas Conservation
Glenn Smith, Chief of Pipeline Safety
Ed Schaub, KPL Gas Service
Robert E. Totten, The Kansas Conrractors Association, Inc.
Louis Stroup, Kansas Municipalities Utilities
Eva Powers, MCI Telecommunications
Larissa Johns, Kansas Public Service
Don Schnacke,Kansas Independent Oil and Gas Association
Rob Hodges, President, Kansas Telecommunications Associations
Janet Stubbs, Homebuilders Association

The Chairman continued the hearing on SB 430 - concerning amending the central interstate radioactive waste compact.

Laura McClure, past president, of the North Central Kansas Citizens and Kansas Coalition on Nuclear Waste said if the Committee has any doubts at all about whether to recommend SB 430 for passage she ask that they not recommend it.

Shaun McGrath opposed SB 430 as he did not believe it was in the best interest of the state for this legislature to commit itself, and future legislatures, to unlimited liability for an unlimited period of time (Attachment 1).

The hearing on SB 430 was closed.

The Chair opened the hearing on SB 677 - concerning oil and gas; relating to abandoned wells.

Bill Bryson the proposed legislation would reduce the amount of time spent on any one investigation and allow for more investigations and they would rather spend their time in field investigation and plugging than tie up staff researching potentially responsible parties most of which are either out of country or deceased (Attachment 2).

The hearing on SB 677 was closed.

The Chair opened the hearing on SB 678 - enacting the Kansas underground utility damage prevention act.

Glenn Smith urged the Committee to pass the one-call damage prevention bill, as they hope it would enhance public safety (Attachment 3). Mr. Smith showed a short video of equipment installing a plastic pipeline and what occurred when the equipment dug into a steel underground natural gas pipeline in Iowa, and another incident that occurred in Kansas.

Ed Schaub supported the one-call damage prevention statue. He thought it would provide state leadership in risk management (Attachment 4).

Robert Totten supported the concept of the bill.

Larissa Johns spoke in support of SB 678 as this legislation mandates prior notification of excavating activity, but basically their primary concern is safety (Attachment 5).

Louis Stroup, Jr., supported the measure, but urged the Committee to consider some amendments, which he provided in balloon form. (Attachment 6).

Eva Powers supported the measure with some suggested changes (Attachment 7).

Donald Schnacke supported the bill, but expressed concern that the term "excavation" is so broad it might include drilling, servicing and related field work (Attachment 8).

Rob Hodges supported the measure with some changes (Attachment 9).

Janet Stubbs appeared in opposition to certain provisions in SB 678 (Attachment 10).

The Chair announced the Committee would meet on Thursday, March 5, 1992. The meeting adjourned at 8:58 a.m.

1991 SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

Date 3-4-92

PLEASE PRINT GUEST LIST

NAME		REPRESENTING
Laura McClure	Glen Elder	Sen.
Shaun McGrath		KNRC
Jean Powers		MCI
Don Schnacke		ICI OGn
Larissa Jones		KPL
Drew Cotter		Peoples Natural Gas
Carl Daugherty		Empire District
Bruce Graham		KEPCo
Warren Wood		Wolf Creek Nuclear Op. Corp.
Dale Nichols		SWBT
Rob Hodges		Ks Telecom Assoc.
Lorie Strorp		Kansas Municipal Utilities
Glenn Smith		KCC
Robert A. Fox		KCC
Russ Bishop		Panhandle Eastern Pipeline Co.
Barry F Lohrschmtz		KCC
Tom Day		KCC Panhandle East + KN.
Jack Glaves		
Dan Haas		KCPL
John Irwin		KDHE
Chuck Layman		KDHE

1991 SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

Date 3-4-92

PLEASE PRINT GUEST LIST

NAME	REPRESENTING
ED SCHAUB	MPL GAS SERVICE

Kansas Natural Resource Council

Testimony by the Kansas Natural Resource Council

To: Senate Energy and Natural Resources Committee

From: Shaun McGrath
Executive Director

Re: SB430 Amendments to the Central Interstate LLRW Compact

Date: March 3, 1992

The Kansas Natural Resource Council is a private, non-profit organization devoted to the advocacy of sustainable energy and natural resource policies for the state of Kansas. Our statewide membership is 850.

KNRC opposes passage of SB430 for two primary reasons.

First, we do not believe it is in the best interest of the state for this Legislature to commit itself, and future legislatures, to unlimited liability for an unlimited period of time, especially for a proposed radioactive waste dump which has far from convincingly demonstrated its ability to contain radioactive waste for the hazardous life of the waste.

* In a report to U.S. Senator J. James Exon, the U.S. General Accounting Office states "while the Boyd County site is technically the strongest site [over the Nemaha county and Nuckolls County sites] and US Ecology is confident that the proposed disposal facility can be licensed on it, our work raised questions as to whether US Ecology had included sufficient information in its license application to fully characterize certain of the site's geologic and hydrologic aspects." The report concludes that "without additional information, US Ecology may have difficulty in demonstrating the ability of the site to meet the technical requirements that (1) the site be generally well drained and free of areas of flooding or frequent ponding and (2) that sufficient depth to the water table exist so that ground water intrusion into the waste will not occur."

The consulting geologists for the Boyd County local monitoring committee were most concerned with the potential of surface and water runoff carrying any spilled radionuclides from the site. In one geologist's report, it was noted that in the event of a heavy rainfall period there was the potential for surface water discharge off the site and movement toward Ponca Creek.

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1516 Topeka Avenue • Topeka, Kansas 66612 • (913) 23

* Of the Boyd County site, Dr. Marvin Resnikoff, Senior Associate at Radioactive Waste Management Associates of New York, writes: "The Boyd County site was poorly chosen and certain long-lived radionuclides will remain hazardous long after the institutional control period, when the site will not be regulated. As has been pointed out by several commenters, the site contains wetlands and is located in a 100 year floodplain. Over time, rainwater will infiltrate through the closure cap and disposal structure and into the waste which will then leach out into the shallow aquifer. There is some dispute when this will occur. The operator of the proposed Boyd County facility claims the structures will remain intact for 3,500 years. In any case, carbon-14, iodine-129, and niobium-94, with half-lives of 5,300, 17 million and 20,000 years respectively, will remain hazardous long after the proposed facility collapses."

* And, regarding engineered drainage and other man-made structures to address potential flooding and surface water runoff such as what US Ecology has proposed, the US Geological Survey wrote in a 1989 report: "there are neither experimental nor experiential real-time bases for long-term projections regarding the effectiveness of engineered barriers for long-term containment of radionuclides...Engineering barriers including those designed to isolate the waste, drain the repository, stabilize the waste or the repository, or prevent the waste from coming in contact with moisture cannot be relied upon to provide long-term (300-500 years) isolation for the radioactive life of the waste."

Until such questions regarding the integrity of the proposed Boyd County site can be answered, it would be foolish for the state to accept unlimited liability for the dump.

The second reason for opposing SB430 is that the bill, and the compact structure, is based on a fundamentally flawed assumption that the Compact should construct one waste dump every 30 years taking turns amongst the member states in hosting the site. The more responsible solution, at least in the short-term until questions about containment technology can be met, is to promote a policy of on-site storage of the waste, and in-situ decommissioning of the reactors.

* Article VI(a)(3) of the Compact states: "nothing in this compact shall be construed to prohibit or otherwise restrict the management of waste on the site where it is generated if such is otherwise lawful."

* The Washington, D.C. law firm, Winston & Strawn wrote to the NRC that "it is our view that power reactor licensees currently have the authority to store LLW at the facility at which it was generated for the duration of the operating license."

* In a September, 1991 report to a number of Congressmen, the General Accounting Office concluded that, with regard to spent fuel rods (high-level waste), "the evidence indicates that virtually all utilities are capable of storing on-site all of the waste generated over the life of each plant." Indeed, there is no prohibition of storage of HLW, or LLRW for that matter, on-site at nuclear power plants.

* Ebasco Services, Inc. wrote a report on the on-site/in-situ option for the Maine Yankee plant and concluded that "the concept appears to be technically feasible, and in addition, has several attractive features which make it worth considering further."

* The United Kingdom, where commercial nuclear power first started in 1965, is the first to give up on the notion of dismantling its reactors and is now looking toward entombing them for at least 130 years. Short-term storage does not solve the problem of nuclear waste, but it could allow time for more careful consideration of longer-term options.

Governor Nelson of Nebraska, under pressure from constituents and generators, and from Congressional mandates, is attempting to force Compact-member states to sign onto SB430. Yet, is that a good enough reason for Kansas to pass this bill? Yesterday, Warren Wood said that shared liability is already a part of the compact agreement. Why do we need to be redundant with this bill? Or, if this bill does indeed create additional shared liability, what is the fiscal impact of SB430?

Before rashly accepting unlimited liability, please deliberate the implications of the Boyd County site. KNRC also urges you to consider the more responsible policy for the state, and Compact, of on-site storage.

KNRC strongly recommends that you not pass SB430.

Wolf Creek
87% nuclear

TESTIMONY ON SENATE BILL 677
BY THE KANSAS CORPORATION COMMISSION
PRESENTED BEFORE THE SENATE ENERGY AND
NATURAL RESOURCE COMMITTEE

March 4, 1992

I am Bill Bryson, Director of the Kansas Corporation Commission's Conservation Division and am appearing on behalf of the Commission in support of Senate Bill 677. This bill proposes amendments to K.S.A. 1989 Supp. 55-179 relating to responsibility for pollution from abandoned wells.

Introduction

The proposed amendment in Senate Bill 677 to K.S.A. 1989 Supp. 55-179 would change the language "shall include" in paragraph (b) to "may include" for determining legally responsible party. This would change the wording of 55-179 (b) back to what it was prior to the passage of HB 3078 in 1986 when the term "may include" appeared in K.S.A. 55-140. Attached are copies of the repealed statute 55-140 and 55-179 as amended in 1986. The portions of both statutes which are the subject of this discussion have been highlighted.

K.S.A. 1989 Supp. 55-179 currently requires the Commission to make an investigation of any complaint filed pursuant to K.S.A. 1989 Supp. 55-178 to determine if any abandoned well is polluting or likely to pollute any usable water supply or causing the loss of usable water. As part of the investigation, the Commission must determine (1) whether the abandoned well is causing or likely to cause pollution or loss and (2) whether a person legally responsible for the care and control of the well exists.

K.S.A. 1989 Supp. 55-179 (b) currently specifies that the determination of legally responsible person shall include, but not be limited to: (1) any operator of a waterflood or other pressure maintenance program deemed to be causing pollution or loss of usable water: (2) The current or last operator of the lease upon which the well is located, irrespective of whether such operator plugged or abandoned the well, and (3) the original operator who plugged or abandoned the well.

From a practical standpoint the Commission has primarily viewed the current or last operator of the lease upon which the well is located as the legally responsible person, largely because the statute indicates that the current or last operator can be considered "irrespective of whether such operator plugged or abandoned such well." The emphasized language essentially places a duty on the current or last operator to take proper care and control of any abandoned or plugged well on the lease regardless of his fault. This does not preclude the necessity for the Commission to have the flexibility to enjoin previous operators of a well when the occasion dictates

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that such action is a more reasonable approach to resolving the problem.

Nevertheless, it has been the Commission's traditional position that any current or last operator deemed legally responsible should be required to properly plug and abandon the well. If the operator believes he's been found unjustly responsible, he is in a better position than the Commission to pursue his predecessors in interest for reimbursement since he should have knowledge of their existence and whereabouts through the chain of lease assignments to which he is a party. The Commission only has access to such leases and agreements to the extent they are recorded in the Register of Deeds Offices, which recording is not required by law.

The use of the language "shall include", however, requires that the Commission consider all of the persons listed in K.S.A. 1989 Supp. 55-179 (b) as well as any other person who may conceivably be in the chain of possession of the well. Such an exhaustive investigation is extremely time-consuming and ultimately defeats the purpose of K.S.A. 1989 Supp. 55-179, which is to protect groundwater resources and to reduce the deterioration of groundwater quality resulting from land use activities. See Proposal No. 23, Report on Kansas Legislative Interim Studies to the 1986 Legislature, p. 223. Arguably, the "shall include" language attempts to require the Commission to determine legal responsibility under the comparative negligence doctrine. However, this reading of the statute is inconsistent with the more specific language making the current or last operator legally responsible, irrespective of whether such operator plugged or abandoned the wells. In order to eliminate this inconsistency, and in recognition of the prior long-standing use of "may include" which gives the Commission flexibility and discretion in determining legal responsibility, the Commission supports the proposed amendment to 55-179 (b).

FISCAL IMPACT

The proposed amendment of K.S.A. 1989 Supp. 55-179 will reduce the Commission's expenditure of investigation and hearing time in determining legal responsibility. A typical investigation currently takes approximately 50 man-hours of field personnel time valued at an average of $35.00 per hour. Preparation for and hearing takes approximately 29-45 man-hours of legal staff time valued at $33.00 per hour. A couple of years ago, we did a random survey of two areas in Eastern Kansas to determine how much personnel time would be spent on researching responsible party as directed by the current wording of K.S.A. 55-179 (b). Table I shows the result of the survey and is representative of what effort is currently required in Eastern Kansas.

The number of potentially responsible persons reviewed can vary with the age of the well, but typically involves investigation of at least four persons and as Table I indicates, a lot more in Eastern Kansas. The proposed amendment should reduce these costs by approximately two-thirds for a savings of $2,000 for each typical investigation and hearing. Last fiscal year, approximately 124 investigations were conducted and in the first half of FY 92 approximately 70 investigations have been

conducted. In FY 1991, one lease had 69 wells to plug with Fee Funds.

In addition, the proposed amendment would reduce the amount of time spent on any one investigation, allowing either more investigations to proceed or more time to be spent in administering and conducting field surveillance in other program areas. No additional positions or operating expenditures would be required to implement the amendment in SB 677. These identified savings would be anticipated to continue in the future.

An immeasurable fiscal impact of retaining the current statutory language is that the Commission staff cannot investigate and resolve as many abandoned well problems each year. We would rather address the potential environmental harm through field investigation and plugging that tie up staff resources in research of potentially responsible parties most of which are either out of country or deceased.

The Commission asks that you recommend this bill for passage.

55-140. Same; investigation by secretary or commission; findings; responsibility for remedial action; costs; hearings and orders; presumption of polluting, when. (a) Upon receipt of any complaint filed pursuant to K.S.A. 55-139, and amendments thereto, the commission or the secretary shall make an investigation for the purpose of determining whether such abandoned well is polluting or is likely to pollute any usable water strata or supply or causing the loss of usable water, or the commission or the secretary may initiate such investigation on its own motion. If the commission or the secretary shall determine:

(1) That such abandoned well is causing or likely to cause such pollution or loss; and (2)(i) that no person is legally responsible for the proper care and control of such well; or (ii) that such person so legally responsible for the care and control of such well is dead or no longer in existence or insolvent or cannot be found, then, within 60 days after completing its investigation, the commission shall plug, replug or repair such well, or cause it to be plugged, replugged or repaired, in such a manner as to prevent any further pollution or danger of pollution of any usable water strata or supply or loss of usable water. The cost of such plugging shall be paid by the commission from the conservation fee fund. For the purposes of this section, a person who is legally responsible for the proper care and control of an abandoned well may include, but is not limited to, the following: Any operator of a waterflood or other pressure maintenance program deemed to be causing pollution or loss of usable water; the current or last operator of the lease upon which such well is located,

irrespective of whether such operator plugged or abandoned such well; and the original operator who plugged or abandoned such well.

(b) Whenever the commission or the secretary determine that a well has been abandoned and is causing or is likely to cause pollution of any usable water strata or supply or loss of usable water, and whenever the commission or the secretary shall have reason to believe that a particular person is legally responsible for the proper care and control of such well, the commission shall cause such person to come before it at a hearing held substantially in the manner prescribed by K.S.A. 55-605, and amendments thereto, and to show cause why the requisite care and control has not been exercised with respect to such well. After such hearing, if the commission finds that such person is legally responsible for the proper care and control of such well and that such well is abandoned, in fact, and is causing or is likely to cause pollution of any usable water strata or supply or loss of usable water, the commission may make any order or orders prescribed in K.S.A. 55-162. Proceedings for rehearing and review of any of the commission's orders may be held pursuant to K.S.A. 55-606, and amendments thereto.

(c) For the purpose of this act and the acts of which this act is amendatory, any well which has been abandoned, in fact, and has not been plugged pursuant to the rules and regulations in effect at the time of plugging such well shall be and is hereby deemed likely to cause pollution of a usable water strata or

supply.

History: L. 1949, ch. 308, Section 2; Lo. 1953, ch. 284, Section 3; L. 1971, ch. 187, Section 3; L. 1982, ch. 228, Section 18, July 1.

55-179. Investigation of complaint by the commission; findings; responsibility for remedial action; costs; hearings; orders. (a) Upon receipt of any complaint filed pursuant to K.S.A. 1987 Supp. 55-178 and amendments thereto, the commission shall make an investigation for the purpose of determining whether such abandoned well is polluting or is likely to pollute any usable water strata or supply or causing the loss of usable water, or the commission may initiate such investigation on its own motion. If the commission determines;

(1) That such abandoned well is causing or likely to cause such pollution or loss; and

(2) (A) that no person is legally responsible for the proper care and control of such well; or (B) that such person so legally responsible for the care and control of such well is dead or no longer in existence or insolvent or cannot be found, then, within 60 days after completing its investigation, the commission shall plug, replug or repair such well, or cause it to be plugged, replugged or repaired, in such a manner as to prevent any further pollution or danger of pollution of any usable water strata or supply or loss of usable water. The costs of such plugging shall be paid by the commission from the conservation fee fund.

(b) For the purposes of this section, a person who is legally responsible for the proper care and control of an abandoned well shall include, but is not limited to, the following: Any operator of a waterflood or other pressure maintenance program deemed to be causing pollution or loss of usable water; the current or last operator of the lease upon which such well is located,

irrespective of whether such operator plugged or abandoned such well; and the original operator who plugged or abandoned such well.

(c) Whenever the commission determines that a well has been abandoned and is causing or is likely to cause pollution of any usable water strata or supply or loss of usable water, and whenever the commission has reason to believe that a particular person is legally responsible for the proper care and control of such well, the commission shall cause such person to come before it at a hearing held in accordance with the provisions of the Kansas administrative procedure act to show cause why the requisite care and control has not been exercised with respect to such well. After such hearing, if the commission finds that such person is legally responsible for the proper care and control of such well and that such well is abandoned, in fact, and is causing or is likely to cause pollution of any usable water strata or supply or loss of usable water, the commission may make any order or orders prescribed in K.S.A. 55-162, and amendments thereto. Proceedings for reconsideration and judicial review of any of the commission's orders may be held pursuant to K.S.A. 55-606, and amendments thereto.

(d) For the purpose of this section, any well which has been abandoned, in fact, and has not been plugged pursuant to the rules and regulations in effect at the time of plugging such well shall be and is hereby deemed likely to cause pollution of any usable water strata or supply.

(e) For the purpose of this section, the person legally responsible for the proper care and control of an abandoned well shall not include the landowner or surface owner unless the landowner or surface owner has operated or produced the well, has deliberately altered or tampered with such well thereby causing the pollution or has assumed by written contract such responsibility.

History: L. 1986, ch. 201, Section 31; L. 1986, Ch. 356, Sec. 165; July 1.

owners and mortgagees of oil and gas interests of record. Notice of the application and the time and place of the hearing thereof shall be properly mailed by the applicant, postage prepaid, at least ten (10) days prior to the date set for the hearing, to all persons whose names and addresses are shown on the list. In addition thereto notices of all applications filed pursuant to this act and the time and the place of the hearing thereof shall be published in at least one (1) issue of a newspaper authorized by law to publish legal notices in the county or counties in which the lands involved are located and in such other newspaper as the commission may designate at least ten (10) days prior to the date set for the hearing. ~~The giving of the notice herein required shall be by the commission: Provided, The commission may require that the applicant or applicants advance the money with which to pay the cost thereof.~~

History: L. 1967, ch. 299, Section 10; L. 1974, ch. 231, Section 1; July 1.

TABLE I

MONTGOMERY COUNTY - 9 LEASES

1. Percent of last owner, 89% correct
2. Percent of all owner, 22% correct
3. Number of times lease changed ownership, average - 18.1
4. Time spent to determine last owner, average - 1.75 hours
5. Time spend to determine all owners, average - 31.6 hours

COFFEY COUNTY (LEROY FIELD) - 19 LEASES

1. Percent of last owner, 57.9% correct
2. Percent of all owners, 15.7% correct
3. Number of times lease changed ownership, average - 11.3
4. Time spent to determine last owner, average - 2.0 hours
5. Time spent to determine all owners, average - 22.6 hours

TOTAL SURVEY

1. Percent of last owner, 73% correct
2. Percent of all owner, 18.8 correct
3. Number of time lease changed ownership - average 14.7
4. Time spent to determine last owner - average 1.87 hours
5. Time spent to determine all owners - average 27.1 hours

Senate Committee on Energy and Natural Resources

March 4, 1992

Testimony of

Glenn Smith
Chief, Pipeline Safety
Kansas Corporation Commission

The Kansas Corporation Commission (KCC) appreciates the opportunity to testify before the Committee on Energy and Natural Resources in support of SB 678.

Preventing damage to underground facilities is the subject of considerable legislation. Currently about 40 states have mandatory one call systems, with Missouri being the most recent addition. Annually, due to "third party" hits there are more than 100 "incidents" occurring on natural gas and hazardous liquids pipelines nationally. An incident is the unplanned escape of gas that results in death or hospitalization of an individual, or that results in property damage of more than $50,000. During 1989 third party hits resulted in 169 "incidents." The outcome; 18 deaths and 74 persons injured, and approximately $14 million of property damage.

Statistics are quite sterile when considering the question of should the state mandate another requirement upon its citizens, and the businesses that operate here. Let me show you why the KCC feels that this legislation is necessary. This video tape shows the one type of equipment commonly used to install plastic pipe in rural areas. The pipe is fused into a continuous coil, and is buried as the plow opens the earth. The pipe can be buried up to five feet (5') deep. Now let me demonstrate the results when one of these plows come into contact with a steel natural gas line. The scene that you are watching is not a Kansas incident, but it is one where a plow similar to the one just shown struck a 800 psi gas line. The explosion and fire caused the death of the three man crew on the job plus two (2) county agent employees who were monitoring the work. The gas ignited immediately after the pipe ruptured. Now we see a similar scene from western Kansas that happened in December, 1991. The reason that you have not heard of this incident previously, and are not asking me how this could have happened is that there was about thirty (30) seconds between the pipe rupture and ignition. The employees on the scene used that time to good advantage; they ran. I cannot explain the reason that ignition occurs immediately, delays slightly, or doesn't happen at all. I do know that preventing line hits saves lives and property.

There is considerable evidence that reductions of about 60% to 80% in the number of times excavators hit and damage underground facilities can be achieved by a damage prevention program that requires both operators of underground facilities and excavators to participate, with sanctions for failure to comply. SB 678 is such a program.

Congress, as part of the federal office of pipeline safety's 1988 reauthorization act, included sanctions in the form of grant reductions, against any state that does not enact a damage prevention program that meets the nine (9) conditions outlined in the act. The federal pipeline safety office instituted those requirements under Title 49, Part 198- Regulations for grants to aid state pipeline safety programs. The federal office of pipeline safety, with strong encouragement from the office of management and budget, are moving toward grants in aid being directly tied to state "performance" in meeting federal guidelines. The damage prevention program is considered a significant factor in determining the performance level of a state program. The federal regulations provide performance language specifications on both the one-call damage prevention program and the qualifications for operation of a one-call

notification system. SB 678 satisfies all the requirements contained in Part 198.

In summary, public safety can be enhanced in Kansas by the passage of this one-call damage prevention bill. It is my hope that passage is only a matter of time, and that it is not necessary to wait until the media has stories of a disaster before action is taken. The KCC submits that now is the time for action, and that SB 678 is the appropriate legislation.

ONE CALL DAMAGE PREVENTION
SENATE BILL 678

I am Ed Schaub representing KPL Gas Service and I am appearing in support of Senate Bill 678.

Formal activities for the prevention of damage to sub surface structures started as early as 1912 in Chicago. The increased utilization of buried utilities, coupled with modern communications and data processing technologies, were combined in 1963 to operate the first systematic one-call center in Rochester, New York. The past 29 years has shown the success of one-call systems with operations in all 50 states and six foreign countries. In 40 of the 50 states one-call and damage prevention are formalized with state statutes. Interestingly, Kansas, which has a significant portion of the nations gas transmission and gathering network only has a voluntary one-call system. Effective risk management for the vital arteries of commerce, industry, and public safety can only be met when all buried facility owners are members and all excavators give notice.

For purpose of perspective and effectiveness of the Kansas One-Call System, even with its voluntary nature, the concept of damage prevention has grown. For the period 1987 through 1991:

	In Bound Calls	% Change	Outbound Messages	% Change
1987	89,561		301,436	
1988	112,842	+25.9	401,367	+33.1
1989	136,862	+21.2	498,971	+24.3
1990	151,388	+10.6	575,226	+15.3
1991	163,136	+ 7.7	634,093	+10.2

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KPL Damage Experience

Year	Incidents	$ of Damage
1987	841	$ 253,047
1988	897	293,285
1989	685	210,001
1990	696	321,014
1991	559 (Down 33.5%)	155,676 (Down 38.5%)

KPL Cost on one-call (membership fees and in-bound KPL message charges)

1990 - $199,584
1991 - 152,060

Anecodotal Data:

1. Number of quarter-sections (160 acre) units included in data base - 416,049
2. Kansas one-call staff-supplied by

   One-call concepts (vendor) - 16 employees

   One-call concepts (vendor) has moved 12 members of systems division - Corporate staff to Wichita based on quality of life and service.
3. Average daily call volume - 800
4. Average call time - 2½ minutes.

Over 150 Kansas businesses are now members of the Kansas One-Call System to meet the public obligation for safety and risk management. Beyond our membership, Kansas Power and Light actively supports the practice of "Dial Before You Dig" by sponsoring contractor damage prevention programs and many other activities designed to accentuate the positive of damage prevention. Based on the continuous dialogue of contractors and one-call system members the services of Fax-A-Locate, and contract locating, and 24 hour emergency service have been added to the menu of services.

Because safety experts have demonstrated that proactive, user friendly accident prevention is more efficient and less costly than repair or rehabilitation of damage, a one-call damage prevention statue would provide state leadership in risk management. In our complex and interdependent society one-call also affirms:

1. An interest in environmental protection by preventing dig-in/damages to products transported in buried pipelines.
2. A concern for preservation of public health/welfare by affirming concern to "Life Support" services to individuals on electric life support devices. The public's health is addressed by a state policy which seeks to protect sewer treatment lines.

3. Banking and commerce are protected by preserving the integrity of vital fiber-optic data networks.

4. Defense is considered a priority by protecting in-bound and out-bound message links of McConnell Air Force Base (Wichita) Ft. Riley, and Ft. Leavenworth.

SENATE ENERGY AND NATURAL RESOURCES COMMITTEE
KANSAS LEGISLATURE
MARCH 4, 1992

TESTIMONY OF LARISSA JOHNS
MANAGER, CUSTOMER ACCOUNTING
KANSAS PUBLIC SERVICE

Chairman Doyen, Members of the Senate and Natural Resources Committee, my name is Larissa Johns. I am Manager of Customer Accounting, Kansas Public Service (KPS). KPS serves nearly 24,000 customers with natural gas in the City of Lawrence and surrounding area.

I am testifying today in support of Senate Bill 678.

The safety and integrity of our distribution system is of the highest priority. We are currently in the fourth year of a $9 million main replacement program. We also have two leak inspectors that walk our lines daily, to ensure the safety of our customers.

However, the integrity of our system is violated each time an excavator hits a line. We belong to the Kansas One Call System so that we can provide line locations and avoid such incidents. Unfortunately, excavators do not always call for location markings.

It costs our company an average of $750 to repair a damaged line. And, it's almost impossible to collect damages. We usually receive less than $.50 on the dollar. The cost not recovered will eventually be borne by the ratepayers.

In 1989, our lines were hit 39 times at an estimated cost of $29,250; in 1990, lines were hit 80 times at an estimated cost of $60,000; and in 1991, 67 lines were hit at an estimated cost of $50,250.

The excavators that hit our lines are usually repeat offenders. One individual hit our lines eight times in one month; however, we only received one call for a locate from him and eight months later, are still trying to collect for damages.

Although the line repair expense is a problem, our primary concern is safety. Someday an excavator is going to hit a line that leads to an explosion. The end result will be extensive property damage and the possibility of serious injuries or death.

This legislation mandates prior notification of excavating activity, as well as providing civil penalties and injunctive relief for violation of the act.

In summary, we ask that SB 678 be enacted. Thank you for your support.

Comments on SENATE BILL 678
March 4, 1992
Senate Energy & Natural Resources Committee

Mr. Chairman, members of the committee, I am Louis Stroup, Jr., executive director of Kansas Municipal Utilities, Inc., a statewide organization of cities that operate municipal water, gas and electric systems.

We support this measure, but because most of our systems are small, we would urge the committee to strongly consider some amendments that would make it easier for smaller utilities with limited staff and resources to comply.

This would be very helpful since there are 434* municipal water utilities in Kansas, plus other water utilities such as Johnson County Water District No. 1; 70 plus municipal gas systems and 122 municipal electric systems.

I have provided the committee with a balloon of our requested amendments and/or comments on various sections of the bill.

*From "Utility Systems Serving Kansas Cities" published by League of Kansas Municipalities July 15, 1986.

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Session of 1992

SENATE BILL No. 678

By Committee on Energy and Natural Resources

2-13

AN ACT enacting the Kansas underground utility damage prevention act; concerning prevention of damage to certain underground utility facilities.

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

Section 1. This act shall be known and may be cited as the Kansas underground utility damage prevention act.

Sec. 2. As used in this act:

(a) "Damage" means any impact or contact with an underground facility, its appurtenances or its protective coating, or any weakening of the support for the facility or protective housing which requires repair.

(b) ~~"Emergency" means any condition constituting a clear and present danger to life, health or property, or a customer service outage.~~

(c) "Excavation" means any operation in which earth, rock or other material on or below the ground is moved or otherwise displaced by any means, except tilling the soil, or railroad or road and ditch maintenance that does not change the existing railroad grade, road grade and/or ditch flowline, or operations related to exploration and drilling of crude oil or natural gas, or both.

(d) "Excavator" means any person who engages directly in excavation activities within the state of Kansas.

(e) "Facility" means any underground line, system or structure used for producing, gathering, storing, conveying, transmitting or distributing gas, electricity, communication, petroleum, petroleum products or hazardous liquids.

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

(g) "Notification center" means ~~a center operated by an organization which has a minimum of five underground operators participating, and has as one of its purposes to receive notification of planned excavation in a specified area from excavators and to dis-~~

"Emergency" means an unforeseen combination of circumstances or the resulting state that requires immediate action to project life, health, property, the environment or to provide essential customer utility services.

Excavation activities include excavating, blasting, boring, tunneling, backfilling, the removal of an above group structure, and other earth moving operations.

Question: Should homeowners who excavate on private property to install sprinkler systems, fences, water service be included?

Kansas One Call.

Comment: We feel there should be only one statewide notification center so that one call is sufficient, not a number of regional or various statewide ceters.

~~seminate such notification of planned excavation to operators who are members and participants.~~

(h) "Operator" means any person who owns or operates an underground facility, except for any person who is the owner of real property wherein is located underground facilities for the purpose of furnishing services or materials only to such person or occupants of such property.

(i) "Preengineered project" means a public project or a project which is approved by a public agency wherein the public agency responsible for the project, as part of its engineering and contract procedures, holds a meeting prior to the commencement of any construction work on such project in which all persons, determined by the public agency to have underground facilities located within the construction area of the project, are invited to attend and given an opportunity to verify or inform the public agency of the location of their underground facilities, if any, within the construction area and where the location of all known and underground facilities are duly located or noted on the engineering drawing as specifications for the project.

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

city,

Comment: Cities also permit some projects)

(k) "Person" means any individual, partnership, corporation, association, franchise holder, state, city, county or any governmental subdivision or instrumentality of a state and its employees, agents or legal representatives.

(l) "Tolerance zone" means the area within ~~24~~ 18 inches of the outside dimensions in all horizontal directions of an underground facility.

Comment: We feel 3 foot variance better than 4 foot. A 10-foot easement with TV cable, gas lines, water lines gets pretty crowded and need to be defined closer than the proposed 4 foot variance.

(m) "Working day" means every day, except Saturday, Sunday or a legally proclaimed local, state or federal holiday.

Sec. 3. An excavator shall not engage in excavation near the location of any underground facility without first having ascertained, in the manner prescribed in this act, a location of all underground facilities in the proposed area of the excavation.

Sec. 4. (a) An excavator shall serve notice of intent of excavation at least ~~three~~ 2 full working days, but not more than 10 working days before commencing the excavation activity, on each operator having underground facilities located in the proposed area of excavation.

Comment: Three days is too far in advance for smaller utilities with limited crews, would make it easier for these smaller systems to plan if changed to 2 days.

(b) The notice of intent of excavation shall contain the name, address and telephone number of the person filing the notice of

intent, the name of the excavator, the date the excavation activity is to commence and the type of excavation being planned. The notice shall also contain the specific location of the excavation if it is to take place within the boundaries of a city or the specific quarter sections if outside the boundaries of any city.

(c) The provisions of this section shall not apply to a preengineered project or a permitted project, except that the excavators shall be required to give notification in accordance with this section prior to starting such project.

Sec. 5. (a) ~~This act recognizes the value of and encourages and authorizes the establishment of notification centers.~~ All operators who have underground facilities shall become a member of a notification center.

(b) Upon the establishment of a notification center in compliance with this act, notification, as required by section 4, to operators who are members of the notification center shall be given by notifying the notification center by telephone at the toll free number. The content of such notification shall be as required by section 4.

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

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

Sec. 6. (a) An operator served with notice shall, in advance of the proposed excavation, unless otherwise agreed between the parties, inform the excavator of the tolerance zone of the underground facilities of the operator in the area of the planned excavation by marking, flagging or other acceptable method ~~no sooner than two working days prior to planned excavation.~~

(b) An operator is responsible for ~~maintaining~~ the identification of the tolerance zone by marking, flags, or other locating identifiers for seven working days. An excavator is required to serve notice of excavation after that time if location is required.

(c) If the operator notifies the excavator that it has no underground facilities in the area of the planned excavation, fails to respond or improperly marks the tolerance zone for the facilities, the excavator may proceed and shall not be liable for any direct or indirect damages resulting from contact with the operator's facilities, except that nothing in this act shall be construed to hold any excavator harmless from liability in those cases of gross negligence or willful and wanton conduct.

Comments: As mentioned earlier, we feel there should be only one single statewide notification center. We also would like it clarified that "an operator" means all functions of a city so that each department(water, gas, electric, etc) would not have to join a center separately.

as far in advance as practical, but not sooner than five working days prior to planned excavation.

Comment: This would encourage excavators to call for "locates" well in advance of the proposed excavation. Many times, depending on the type and extent of the excavation, the utility is required to provide an inspector on the job if an operator has reason to believe that damage could occur through excavation activities.

the original marking of

is required to maintain the markings, flags, or other locating identifiers for seven working days and

Comment: Maintaining markings for long period of time is major problem for small utilities (cities) with limited staff.

Comment: Need provision here to require a follow-up call to be made to insure that operator got the original information.

Sec. 7. In the case of an emergency which involves danger to life, health or property or which requires immediate correction in order to continue the operation of an industrial plant or to assure the continuity of public utility service, excavation, maintenance or repairs may be made without using explosives, if notice and advice thereof, whether in writing or otherwise are given to the operator or notification center as soon as reasonably possible.

Sec. 8. This act shall not be construed to authorize, affect or impair local ordinances, resolutions or other provisions of law concerning excavating or tunneling in a public street or highway or private or public easement.

Sec. 9. Upon receiving information as provided in section 6, an excavator shall exercise such reasonable care as may be necessary for the protection of any underground facility in and near the construction area when working in close proximity to any such underground facility.

Sec. 10. When any contact with or damage to any underground facility occurs, ~~the operator shall be informed immediately by the excavator~~. Upon receiving such notice, the operator shall immediately dispatch personnel to the location to provide necessary temporary or permanent repair of the damage. If a serious electrical short is occurring or dangerous gases or fluids are escaping from a broken line, the excavator shall immediately inform emergency personnel.

(such as nicks, dents, scratches, gouges in coating)

excavator shall immediately notify the operator of said facilities and report such damage.

Comment: Maybe should include definition of emergency personnel. This seems to imply that emergency personnel are fire, police, etc. Cities consider their utility response personnel as emergency personnel in this situation.

Sec. 11. (a) In a civil action in a court of this state when it is shown by competent evidence that damage to the underground facilities of an operator resulted from excavation activities and that the excavator responsible for giving notice of intent to excavate failed to give such notice, or excavation occurred outside the notice and marked area, there shall be a rebuttable presumption that the excavator was negligent for failing to give such notice or abide by the notice given.

(b) The provisions of subsection (a) shall not apply if the operator whose underground facilities are damaged fails to participate in a notification center.

(c) In no event shall the excavator be responsible for any damage to underground facilities if such damage was caused by the failure of the operator to correctly and properly mark the location of the tolerance zone of the damaged facility.

Comment: If markings lost because of construction activities, it's then very difficult to determine if the project was marked correctly in first place. How does this affect legal liability?

Sec. 12. Any person whom this act applies, who violates any of the provisions contained in this act, shall be subject to civil penalties and injunctive relief as set out in K.S.A. 66-1,151, and amendments thereto.

Sec. 13. This act shall be administered and enforced by the state corporation commission of the state of Kansas.

Sec. 14. If any provision of this act or the application thereof to any person or circumstance is held invalid, the remainder of the act and the application of such provision to other persons or circumstances shall not be affected thereby.

Sec. 15. This act shall take effect and be in force from and after its publication in the statute book.

Comment: There should be some committee discussion on adding a section which would address the rights of operators to bill for damages for time, materials, equipment and lost commodity such as natural gas, oil, etc. Cities assert that often when an excavator is billed for damages, they are more careful in the future. Also, when a major outage occurs with natural gas, the cost to the utility (city)is significant since each customer must first be shut off and then relit. And the cost of lost gas may exceed all other costs.

MCI Telecommunications Corporation

MCI

BEFORE THE SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
March 4, 1992

I am Eva Powers appearing on behalf of MCI Telecommunications Corporation. Today I am substituting for Leann Chilton, MCI's Governmental Affairs Director.

MCI applauds this committee in addressing the issue of notification centers and specifically Call Before You Dig legislation through SB 678. MCI has a substantial investment in underground fiber. Whether MCI is the owner of the facility or the excavator installing additional facilities, MCI supports a statutory approach that is equitable to both the excavator and owner. MCI also supports a system which encourages all excavators to call. One method utilized by other states is to have the statute clearly specify that there shall be one notification center, available 24 hours a day, 7 days a week with a toll free statewide 800 number.

In addition, MCI is encouraged by the sections that require excavators to contact the center. We believe it is equally important that underground facilities owners belong to the notification center and to respond to excavators in identifying their underground facilities. We are somewhat concerned that the 3-day notice prior to excavation and a 2-day requirement by the owner of the underground facility to mark may not allow a sufficient window in which to respond.

We agree with the exemptions for emergencies as a necessary element acknowledging situations beyond control of the excavator or facility owner. Most states that have adopted "One Call" statutes also have penalties for noncompliance with the statute's provisions. This bill leaves such decisions up to the discretion of the Kansas Corporation Commission. MCI is concerned whether or not the KCC has the requisite jurisdiction over nonregulated contractors and whether the particular statutory penalty section is applicable.

Again, MCI commends this committee for stepping forward and addressing an issue of critical importance, from a safety standpoint as well as security to our communications network. MCI would like to extend an offer to work with this committee and others who have expressed concerns in seeing that the goal of having a sensible, equitable approach to excavators and facility owners is achieved.

Thank you for your time and attention.

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3-4-92
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attachment 7-1

KIOGA

KANSAS INDEPENDENT OIL & GAS ASSOCIATION

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March 4, 1992

RE: ONE-CALL LEGISLATION SB 678

This proposal has been around since 1985. It was the result of an interim study No. 53 (1985) and SB 181 of the 1985 Session.

Since those days the subsequent bills have excluded "drilling activities" under the definition of "excavation". The exemption first appeared in HB 2666 (1986).

We were and still are concerned that the term "excavation" is so broad it would include drilling, servicing and related field work. The bill still provides exemptions for agriculture, railroad and road and ditch maintenance.

We also believe we might fit under the "pre-engineered project" and a"permitted project" - both of which are exemptions.

One-call is primarily adaptable to urban underground development. It is much less important in rural areas. The time to report and weak-end delays pending notification and response for drilling contractors, who work around the clock is very important. Time in oil field operations equates to money.

Donald P. Schnacke

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3-4-92
attachment 8

KTA

Legislative Testimony

Kansas Telecommunications Association, 700 S.W. Jackson St., Suite 704, Topeka, KS 66603-3731

Testimony before the
Senate Committee on Energy & Natural Resources

SB 678

March 4, 1992

Mr. Chairman, members of the committee, I am Rob Hodges, President of the Kansas Telecommunications Association. Our membership is made up of telephone companies, long distance companies, and firms and individuals who provide service to and support for the telecommunications industry in Kansas.

The KTA supports the concepts of SB 678. Many KTA member companies are already participating in a voluntary "one-call" program.

Our only comments on SB 678 surround the wording of the bill that might be construed as encouraging more than one notification center. KTA supports a truly "one-call" program and is not supportive of multiple notification centers because of the potential for confusion among excavators and utilities alike.

Specifically, our comments regard Section 5 of the bill on page 3. In that section, we would prefer to see reference to "a single notification center" rather than "notification centers." Also, we would prefer to have the reference to "the defined geographical boundary of the notification center" changed to "the state."

Thank you, Mr. Chairman, for time to bring to you our comments.

E&NR
3-4-92
attachment 9

HOME BUILDERS ASSOCIATION
OF KANSAS, INC.

Executive Director
JANET J. STUBBS

TESTIMONY

SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

SB 678
March 4, 1992

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

My name is Janet Stubbs, Executive Director of the Home Builders Association of Kansas, appearing today in opposition to certain provisions of SB 678.

Our concerns remain the same as in years past on the definition of "tolerance zone". As defined, the vertical depth of the facility is not specific. The contractor would be required to hand dig a distance of 48 inches horizontally and an unspecified depth.

Section 4(a) speaks to the notice requirements of the contractor. Three working days would be more delay than is being experienced under the current system of operation. Section 6(b) would indicate that if the contractor asks for a locate, receives such within 3 days, is unable to excavate within the 7 day time period, due to inclement weather or other unexpected delay, he would be required to request another locate to avoid liability.

In Section 11, the language "rebuttable presumption" as it is used is a concern. If the excavation occurred outside the notice and marked area, due to relocation of the markings by some unknown person, he would be considered guilty until he could prove his innocence, as we understand the provision.

The HBA of Kansas does not approve of the irresponsible type activity as described by the Lawrence utility. However, it appears that everyone has been exempted from the provisions of this bill except the small contractor and the private citizen who is not engaged in agriculture. We believe the current system is working well. The utilities are being very responsive to a request to locate. They are not being required to wait three days and they are concerned that will be the result of passage of this legislation. This provision is not a compromise by the small contractors affected by this bill.

We urge your consideration of our concerns expressed here as you discuss this legislation and make amendments necessary.

816 Tyler, Suite 300A • Topeka, Kansas 66612 • (913) 233-9853

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