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Date: March 15, 2023  
To: Chairman Olson and the Senate Committee on Utilities  
From: City of Overland Park  
Re: Written Neutral Testimony regarding HB 2226 (With Concerns)

Thank you for allowing the City of Overland Park to submit neutral testimony regarding HB 2226, amending the Underground Utility Damage Prevention Act, and to share our concerns.

The City's understanding of HB 2226 is that the proposed changes are intended to update and modify the requirements for operators (utilities) to identify routes or boundaries of their existing facilities. The bill also adds flexibility by granting the state corporation commission the authority to adjust various notice and marking deadlines. In general, the City is fine with nearly all of the proposed amendments. However, the City has the follow two concerns:

Our first concern is the proposed deletion of existing subsection (e) of K.S.A. 66-1806 (*p. 7, ll. 27-32*). Subsection (e) addresses the situation where: (1) an excavator calls in for locates; (2) the operator does the locates (e.g., flags); but then (3) some third party improperly removes or alters the locates before the excavation commences. In such a case, subsection (e) currently provides that, upon notice from the excavator, the operator will make a reasonable effort to quickly re-identify its facilities and tolerance zone for the contractor so that the project can proceed. The overall purpose of the Act is to protect the operator's facilities as well as the public from excavation by the contractor; however, the proposed removal of subsection (e) opens the door for a situation to occur where, despite both parties attempting to follow required safety protocols, the re-identification does not occur and there is an excavation that damages the operator's facilities. Obviously in the case of a gas, electric or water line this would not only damage the operator's facilities and delay the excavator's project, it could also create a danger or hazard to the public at large. Likewise, damage to a broadband/communications facility could impair both emergency or normal communications of the public or government. We presume this result is unintended, and it should be remedied. We believe subsection (e), or a variation of it, should remain in the Statute.

Our second concern is the proposed deletion of "*Within two working days*" at the beginning of K.S.A. 66-1906(a) (*p. 6, l. 43*). While we are fine with the new language acknowledging the new authority for the state corporation commission to modify various deadlines, this deletion has the effect of requiring operators to mark the area within the first working day following the contractor submitting their intent instead of the current two-day requirement. In practice this change will create a stress and burden on operators while not significantly benefitting contractors. This might be an unintended deletion as we note the contractor still must serve notice of intent of excavation at least two full working days in advance (*K.S.A. 66-1804(a) & (b) - p. 4, ll. 23 & 27*), and the complaint process with the state corporation commission for failed markings still requires two working days (*K.S.A. 66-1804(g) - p. 8, ll. 9-13*). Accordingly, we ask the Committee to consider reinserting the two-day requirement into K.S.A. 66-1906(a).

Thank you for allowing the City to testify on this bill. We respectfully request that the Committee thoroughly vet and address the above two concerns in consideration of this bill.