



1500 SW Arrowhead Road
Topeka, KS 66604-4027

Phone: 785-271-3100
Fax: 785-271-3354
<http://kcc.ks.gov/>

Susan K. Duffy, Chair
Dwight D. Keen, Commissioner
Andrew J. French, Commissioner

Laura Kelly, Governor

Before the House Committee on Energy, Utilities, and Telecommunications
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In-Person Testimony in Support of
House Bill 2226

Submitted by Leo Haynos, Chief Engineer, Utilities Division
On Behalf of
The Staff of the Kansas Corporation Commission

Chair Delperdang, Vice Chair Turner, Ranking Minority Member Ohaebosim, and members of the committee, thank you for the opportunity to provide testimony to your committee today on behalf of the staff of the Kansas Corporation Commission (Commission) in support of HB 2226.

The Kansas Underground Utility Damage Prevention Act, (KUUDPA), establishes the rules for communication between the excavators and utilities in order to prevent damage to buried infrastructure and to prevent accidents. It requires the excavator to notify the utility of his intent to dig, and it requires the utility to provide a visual indication of the where the utility is located in the easement. KUUDPA was promulgated in 1993, and there have been only a few revisions since then. The last major review of the law occurred in 2008. At that time, there were 470,000 locates called in by excavators.

HB 2226 proposes the following KUUDPA updates:

1. K.S.A. 66-1802: Change the definition of “whitelining” to allow the excavator to provide a virtual excavation path when applying for the ticket and other minor definition updates;
2. K.S.A. 66-1804: Lengthen the life of a locate ticket from 15 days to 20 days, and provide flexibility to the statute by allowing the Corporation Commission to adjust the mandated time intervals regarding locates through a rules and regulation process;
3. K.S.A. 66-1806: Provide flexibility to the Commission to modify the amount of time allowed to utilities to complete locates after receiving the excavator’s request;
4. Require excavators to notify operators of possible damage by notifying the notification center using a “dig-up” ticket; and
5. Provide some miscellaneous cleanup of the law.

K.S.A. 66-1802: Change the definition of “whitelining” to allow the excavator to provide a virtual excavation path when applying for the ticket

HB 2226 offers several minor definition updates for your consideration. The most significant change would be to the definition of whitelining to allow for “virtual whitelining” that is now

possible using mapping technology. By allowing this process, we would expect to see more precise locating of just what the excavator needs and thereby lead to more efficient use of the locator's time.

Other definition changes are minor and are meant to clear up confusion in the law. They are:

Change the sentence structure in the definition of facility to clearly state that stormwater sewers are exempt from the locate requirement. The qualifier for facilities located outside of city limits was meant to apply to petroleum production lead lines and salt water disposal lines. The current sentence structure appears to apply the qualifier to stormwater sewers as well. Stormwater sewers are almost always within a city or platted lands. This modification would ensure the exemption of stormwater sewers from the requirement of being marked by the operator.

Modification of the definition of permitted project explains how the applicant of permit may notify utility operators of his intent to excavate in an area covered by a permit. This practice will allow the permit applicant to not be required to request updates for the duration of the permit. Note that any excavators working as subcontractors for the permit applicant would still be required to get locates.

Tolerance zone definition clarifies that the maximum width of the tolerance zone will be less than 24 inches or as stated, "not more than". As it is currently written, there is no maximum width. The tolerance zone allows for the inherent inaccuracies of providing locate markings for buried facilities. However, the intent is to limit that inaccuracy to no more than 24 inches.

The remaining changes in the definition of update are proposed to be consistent with the recommended change to the length of a ticket life.

K.S.A. 66-1804: Lengthen the life of the ticket from 15 days to 20 days.

In 2022, excavators requested locates 658,000 times. Typically, 5 utilities have buried facilities at each excavation site. Therefore, excavators' requests for locates in 2022 resulted in 3.6 million actions being taken by utility operators. This amount of activity--which grows every year-- results in a complicated logistics problem for all parties in meeting the needs of timely and accurate locates.

The ticket life limitation was placed in the law because of a concern that temporary paint markings or flags would not be visible after two weeks. If an excavator is unable to complete the proposed work in 15 days, they can call in an update. An excavator requiring more than 15 days to complete work can be affected by weather conditions, job site logistics, digging conditions or all of the above. Also, Ticket volume can lead to a ticket not getting marked until several days after the excavation start date which effectively shortens the amount of time that an excavator has to work before calling in updates. Therefore ticket life can set up a self-defeating feedback loop that continually increases the amount of updates to be completed.

In 2022, 29% of the incoming locate requests (187,789) were updates of previous requests. Each incoming request, generates on average five utilities that respond to the site to provide locates.

Assuming a conservative cost of \$20/locate, the cost to respond to update request has cost Kansas utilities (and their ratepayers) \$18.8 million. This cost does not include the cost of downtime to excavators that may result from getting late locates or inaccurate locates because of the demand placed on overworked locators by the volume of work. The impact on locate demand caused by work load and exacerbated by updates is demonstrated by the 15,507 non-response tickets called in by excavators in 2022 alleging that a utility had not marked or had inaccurately marked a locate request.

In an attempt to alleviate some of the unnecessary ticket volume, HB 2226 proposes to extend the ticket life to 20 days in order to still provide a safety precaution to encourage excavators to call in for fading marks or displaced flags to be refreshed. While the expansion of the ticket life to 20 days will not entirely resolve the issue with late locates or the need for updates, it is expected to provide some relief to utilities that are facing a significant increase in infrastructure projects over the next few years. In order to provide additional flexibility to adjusting the length of a ticket life, HB 2226 proposes to allow the Commission to modify the length of the ticket life through a rules and regulation process if it appears that additional adjustments are necessary to ensure locates are being performed in a timely manner.

K.S.A. 66-1806: Remove the obligation for operators to respond to duplicate locate requests and provide flexibility to the Commission to modify the amount of time allowed to utilities to complete locates after receiving the excavator's request

K.S.A. 66-1806 is the section of the law that sets out the obligations of utility operators to perform locates. HB 2226 proposes to remove paragraph (e) from this section in order to minimize the need for operators to perform duplicate locates at the same site.

Under K.S.A. 66-1809, an excavator is required to use reasonable care when excavating inside the tolerance zone. K.A.R. 82-14-1 defines one of the aspects of reasonable care as maintaining the visibility of the markings that indicate the location of underground utilities throughout the excavation period. Therefore, reasonable care places the oversight of protecting locates as the responsibility of the excavator. The ability to call and request preferential treatment in receiving additional locates adversely affects the ability of locators to provide timely locates for other requests. Therefore, we recommend this paragraph be deleted. If the excavator does not have locates, they should call back and get in the queue to get an update to the ticket. Although not in statute, the informal practice established by the notification center of allowing “non-response” tickets to advise operators of a need for additional locates appears to work well without making additional response a requirement.

Similar to the change recommended to excavator requirements to allow the Commission the flexibility to adjust the length of the ticket life, HB 2226 proposes to allow the Commission through the rules and regulation process to also adjust the amount of time available to utility operators to allow them to complete the locating process during periods of high demand.

Currently, the law requires the excavator to wait two working days or until all utilities on the request have responded, whichever is later. The addition of subparagraph (k) would allow the KCC to adjust the amount of time an excavator must wait to begin excavating in regulation, if excavation activity overwhelms the utilities' ability to provide locates. If it becomes necessary to take this action, this provision would allow the KCC to make the adjustment rather than return to the legislature to modify the statute.

K.S.A. 66-1805 and 66-1810: Require excavators to notify operators of possible damage by notifying the notification center using a "dig-up" ticket. Require the notification center to accept and administrate this type of notice.

The requirement for an excavator to notify an operator immediately when a damage occurs dates back to the original promulgation of the statute in 1993. The statute does not define how the excavator is to perform the notification. The locate ticket lists a phone number of the operator, which is the most common way that excavators meet this obligation. The proposed amendment to 66-1810 would maintain the requirement that the excavator notify the utility, and it would require an additional notice to the notification center. The additional notification to the call center will serve as a backup notice to the operator should the excavator not be able to reach the operator by phone.

The proposed amendment to 66-1805 would require the notification center to accept "dig-up tickets" and notify its members in the vicinity of the alleged damage/contact. Because the notification center notifies its members within minutes of receiving a request, this initiative will allow operators and KCC staff to track damages in almost real time in order to investigate the cause of the damage. It will also allow for quicker response time to coordinate repairs of any damaged facility and provide a record of damages that occur in the state.

Thank you for the opportunity to offer our perspective on the proposed bill and the opportunity to appear before your committee.