

SENATE Substitute for HOUSE BILL No. 2127

By Committee on Utilities

3-27

9 AN ACT concerning the Kansas underground utility damage prevention
10 act; amending K.S.A. 66-1802, 66-1804, 66-1805 and 66-1806 and re-
11 pealing the existing sections.
12

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

14 Section 1. On July 1, 2008, K.S.A. 66-1802 is hereby amended to
15 read as follows: 66-1802. As used in this act:

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

19 (b) "Emergency" means any condition constituting a clear and pres-
20 ent danger to life, health or property, or a customer service outage.

21 (c) "Excavation" means any operation in which earth, rock or other
22 material below the surface is moved or otherwise displaced by any means,
23 except tilling the soil for normal agricultural purposes, or railroad or road
24 and ditch maintenance that does not change the existing railroad grade,
25 road grade and/or ditch flowline, or operations related to exploration and
26 production of crude oil or natural gas, or both.

27 (d) "Excavator" means any person who engages directly in excavation
28 activities within the state of Kansas, but shall not include any occupant
29 of a dwelling who: (1) Uses such dwelling as a primary residence; and (2)
30 excavates on the premises of such dwelling.

31 (e) "Facility" means any *sanitary sewer* or underground line, system
32 or structure used for *transporting*, gathering, storing, conveying, trans-
33 mitting or distributing *potable water*, gas, electricity, communication,
34 crude oil, refined or processed petroleum, petroleum products or haz-
35 ardous liquids; facility shall not include, any *stormwater sewers* or pro-
36 duction petroleum lead lines, salt water disposal lines or injection lines,
37 which are not located on platted land or inside the corporate limits of any
38 city.

39 (f) "Locatable facility" means facilities for which the tolerance zone
40 can be determined by the operator using generally accepted practices
41 such as as-built construction drawings, system maps, probes, locator de-
42 vices or any other type of proven technology for locating.

43 (g) "Marking" means the use of stakes, paint, flags or other clearly

1 identifiable materials to show the field location of underground facilities,
2 in accordance with the rules and regulations promulgated by the state
3 corporation commission in the administration and enforcement of this
4 act.

5 (h) "Municipality" means any city, county, municipal corporation,
6 public district or public authority located in whole or in part within this
7 state which provides firefighting, law enforcement, ambulance, emer-
8 gency medical or other emergency services.

9 (i) "Notification center" means the statewide communication system
10 operated by an organization which has as one of its purposes to receive
11 and record notification of planned excavation in the state from excavators
12 and to disseminate such notification of planned excavation to operators
13 who are members and participants.

14 (j) "Operator" means any person who owns or operates an under-
15 ground *tier 1 or tier 2* facility, except for any person who is the owner of
16 real property wherein is located underground facilities for the purpose of
17 furnishing services or materials only to such person or occupants of such
18 property.

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

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

35 (m) "Person" means any individual, partnership, corporation, asso-
36 ciation, franchise holder, state, city, county or any governmental subdivi-
37 sion or instrumentality of a state and its employees, agents or legal
38 representatives.

39 (n) "Production petroleum lead line" means an underground facility
40 used for production, gathering or processing on the lease or unit, or for
41 delivery of hydrocarbon gas and/or liquids to an associated tank battery,
42 separator or sales facility. Production petroleum lead lines shall include
43 underground lines associated with lease fuel and saltwater disposal and

1 injection.

2 (o) "Platted land" means a tract or parcel of land which has been
3 subdivided into lots of less than five acres for the purpose of building
4 developments, including housing developments, and for which a sur-
5 veyor's plat has been filed of record in the office of the register of deeds
6 in the county where the land is located.

7 (p) "*Tier 1 facility*" means an underground facility used for trans-
8 porting, gathering, storing, conveying, transmitting or distributing gas,
9 electricity, communications, crude oil, refined or reprocessed petroleum,
10 petroleum products or hazardous liquids.

11 (q) "*Tier 2 facility*" means an underground facility used for trans-
12 porting, gathering, storing, conveying, transmitting or distributing pota-
13 ble water or sanitary sewage.

14 ~~(p)~~ (r) "Tolerance zone" means the area ~~within~~ not less than 24 inches
15 of the outside dimensions in all horizontal directions of an underground
16 facility, *except that a larger tolerance zone for a tier 2 facility may be*
17 *established by rules and regulations adopted under K.S.A. 2006 Supp. 66-*
18 *1815, and amendments thereto.*

19 ~~(q)~~ (s) "Update" means an additional request from the excavator to
20 extend the time period of the request for intent to excavate beyond the
21 15 calendar day duration of the request.

22 ~~(r)~~ (t) "Whitelineing" means the act of marking by the excavator the
23 route or boundary of the proposed excavation site with white paint, white
24 stakes or white flags.

25 ~~(s)~~ (u) "Working day" means every day Monday through Friday be-
26 ginning at 12:01 a.m., except for the following officially recognized holi-
27 days: New Year's day, Memorial day, Independence day, Labor day,
28 Thanksgiving day, the day after Thanksgiving and Christmas.

29 Sec. 2. On July 1, 2008, K.S.A. 66-1804 is hereby amended to read
30 as follows: 66-1804. (a) Except in the case of an emergency, an excavator
31 shall serve notice of intent of excavation at least two full working days,
32 but not more than 15 calendar days before the scheduled excavation start
33 date, on each operator having underground *tier 1* facilities located in the
34 proposed area of excavation.

35 (b) *An excavator may serve notice of intent of excavation at least two*
36 *full working days, but not more than 15 calendar days before the sched-*
37 *uled excavation start date, on each operator of tier 2 facilities located in*
38 *the proposed area of excavation.*

39 ~~(b)~~ (c) The notice of intent to excavate or any subsequent updates
40 shall be valid for 15 calendar days after the excavation start date and such
41 notice shall only describe an area in which the proposed excavation rea-
42 sonably can be completed within the 15 calendar days.

43 ~~(c)~~ (d) No person shall make repeated requests for remarking unless

1 the request is due to circumstances not reasonably within the control of
2 such person.

3 ~~(d)~~ (e) The notice of intent of excavation shall contain the name, ad-
4 dress and telephone number of the person filing the notice of intent, the
5 name of the excavator, the date the excavation activity is to commence
6 and the type of excavation being planned. The notice shall also contain
7 the specific location of the excavation.

8 ~~(e)~~ (f) The person filing the notice of intent to excavate shall, at the
9 request of the operator, whitenline the proposed excavation site when the
10 excavation location cannot be described with sufficient detail to enable
11 the operator to ascertain the location of the proposed excavation.

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

16 Sec. 3. On July 1, 2008, K.S.A. 66-1805 is hereby amended to read
17 as follows: 66-1805 (a) This act recognizes the establishment of a single
18 notification center for the state of Kansas. ~~The notification center shall~~
19 ~~provide prompt notice to each affected member of any proposed excava-~~
20 ~~tion.~~ Each operator who has an underground facility shall become a
21 member of the notification center.

22 (b) *For operators of tier 1 facilities or operators of tier 2 facilities that*
23 *desire notification in the same manner as operators of tier 1 facilities, the*
24 *notification center shall provide prompt notice of any proposed excavation*
25 *to each affected operator that has facilities recorded with the notification*
26 *center in the area of a proposed excavation site.*

27 (c) *For operators of tier 2 facilities that desire direct contact with the*
28 *excavator, the notification center shall provide the excavator with the*
29 *name and contact information of the affected operator that has facilities*
30 *recorded with the notification center in the area of the proposed excava-*
31 *tion.*

32 ~~(b)~~ (d) Notification, ~~as required by K.S.A. 66-1804, and amendments~~
33 ~~thereto,~~ to operators *as defined in subsection (b)* shall be given by noti-
34 fying the notification center by telephone at the toll free number or by
35 other communication methods approved by the notification center. The
36 content of such notification shall be as required by K.S.A. 66-1804, and
37 amendments thereto.

38 (e) *Notification to operators as defined in subsection (c) may be given*
39 *by notifying the operator of tier 2 facilities using the contact information*
40 *provided by the notification center. The content of such notification shall*
41 *be as required by K.S.A. 66-1804, and amendments thereto.*

42 ~~(e)~~ (f) Each operator who has an underground facility within the state
43 shall be afforded the opportunity to become a member of the notification

1 center on the same terms as the original members.

2 ~~(g)~~ (g) A suitable record shall be maintained by the notification center
3 to document the receipt of notices from excavators as required by this
4 act.

5 (h) *A suitable record shall be maintained by operators of tier 2 facil-*
6 *ities that desire direct contact with the excavator pursuant to subsection*
7 *(c) to document the receipt of notices from excavators.*

8 Sec. 4. On July 1, 2008, K.S.A. 66-1806 is hereby amended to read
9 as follows: 66-1806. (a) Within two working days, beginning on the later
10 of the first working day after the excavator has filed notice of intent to
11 excavate or the first day after the excavator has whitelined the excavation
12 site, an operator served with notice, unless otherwise agreed between the
13 parties, shall inform the excavator of the tolerance zone of the under-
14 ground facilities of the operator in the area of the planned excavation by
15 marking, flagging or other acceptable method.

16 (b) *If the operator of tier 2 facilities cannot accurately mark the tol-*
17 *erance zone, such operator shall mark the approximate location to the best*
18 *of its ability, notify the excavator that the markings may not be accurate,*
19 *and provide additional guidance to the excavator in locating the facilities*
20 *as needed during the excavation.*

21 (c) *The operator of tier 2 facilities shall not be required to provide*
22 *notification of the tolerance zone for facilities which are at a depth at least*
23 *two feet deeper than the excavator plans to excavate but does have to*
24 *notify the excavator of their existence.*

25 ~~(d)~~ (d) If the operator of a tier 1 facility has no underground facilities
26 in the area of the proposed excavation, such operator, before the exca-
27 vation start date, shall notify the excavator that it has no facilities in the
28 area of proposed excavation by telephone, facsimile, marking the area all
29 clear or by other technology that may be developed for such purposes.

30 ~~(e)~~ (e) If the excavator notifies the notification center, within two
31 working days after the initial identification of the tolerance zone by the
32 operator, that the identifiers have been improperly removed or altered,
33 the operator shall make a reasonable effort to reidentify the tolerance
34 zone within one working day after the operator receives actual notice from
35 the notification center.

36 ~~(f)~~ (f) If the excavator has provided notice to an operator pursuant
37 to K.S.A. 66-1804, and amendments thereto, and the operator fails to
38 comply with subsections (a), (b) or (c) or notifies the excavator that it has
39 no underground facilities in the area of the planned excavation, ~~fails to~~
40 ~~respond or improperly marks the tolerance zone for the facilities,~~ the
41 excavator may proceed and shall not be liable to the operator for any
42 direct or indirect damages resulting from contact with the operator's fa-
43 cilities, except that nothing in this act shall be construed to hold any

1 excavator harmless from liability to the operator in those cases of gross
2 negligence or willful and wanton conduct.

3 ~~(e)~~ (g) For economic damages in any civil court of this state, failure
4 of an operator to inform the excavator within two working days of the
5 tolerance zone of the underground facilities of the operator in the manner
6 required by subsection (a) of K.S.A. 66-1806, and amendments thereto,
7 shall not give rise to a cause of action on the part of the excavator against
8 an operator, except that nothing in this act shall be construed to hold any
9 operator harmless from liability in those cases of inaccurate marking of
10 the tolerance zone, gross negligence or willful and wanton conduct. Such
11 failure may subject an operator to civil penalties as determined by the
12 state corporation commission.

13 ~~(f)~~ (h) Any person claiming that an operator has failed to inform the
14 excavator within two working days of the tolerance zone of the under-
15 ground facilities of the operator shall file a complaint with the state cor-
16 poration commission requesting enforcement of subsection (a) within one
17 year of becoming aware of the violation.

18 ~~(g)~~ (i) All *tier 1* facilities installed by an operator after January 1, 2003,
19 shall be locatable.

20 (j) *All tier 2 facilities installed by an operator after July 1, 2007, shall*
21 *be locatable.*

22 New Sec. 5. (a) All tier 2 facilities installed by an operator after July
23 1, 2007, shall be locatable.

24 (b) As used in this section, “tier 2 facility” means an underground
25 facility used for transporting, gathering, storing, conveying, transmitting
26 or distributing potable water or sanitary sewage.

27 Sec. 6. On July 1, 2008, K.S.A. 66-1802, 66-1804, 66-1805 and 66-
28 1806 are hereby repealed.

29 Sec. 7. This act shall take effect and be in force from and after its
30 publication in the statute book.