

MINUTES OF THE House COMMITTEE ON Transportation

The meeting was called to order by Representative Rex Crowell at
Chairperson

1:30 ~~am~~ p.m. on March 19, 1985 in room 519-S of the Capitol.

All members were present ~~xxxxxx~~

Committee staff present:

Hank Avila, Legislative Research Department
Fred Carman, Office of the Revisor of Statutes
Donna Mulligan, Committee Secretary

Conferees appearing before the committee:

Mr. Ed DeSoignie, Kansas Department of Transportation
Mr. Bill Green, Kansas Corporation Commission
Mr. Larry Knopke, Kansas Dept. of Health & Environment
Mr. Tom Whitaker, Kansas Motor Carriers Association
Captain David Hornbaker, Kansas Highway Patrol
Mr. Don Elliott, Kansas Gas and Electric Company
Mr. Don Low, Kansas Corporation Commission

Chairman Rex Crowell called the meeting to order and the first business was a hearing on SB-21 concerning transportation of hazardous materials.

Mr. Ed DeSoignie of the Kansas Department of Transportation testified in support of SB-21. (See Attachment 1) He said this bill was introduced by the Special Committee on Transportation as a product of hearings held during the 1984 interim on Proposal No. 44--Transportation of Hazardous and Radioactive Materials.

Mr. Bill Green, of the State Corporation Commission, testified in support of SB-21. (See Attachment 2)

Mr. Green said SB-21 was recommended because the existing statutes authorizing the adoption of rules and regulations for motor carriers (K.S.A. 66-1,129) do not specifically authorize the Commission to adopt rules and regulations regarding the transportation of hazardous materials.

Mr. Larry Knopke, of the Kansas Department of Health and Environment, testified in favor of SB-21. (See Attachment 3)

Mr. Knopke recommended that Section 1(a)(6) be amended to read "Motor carrier transportation requirements that are consistent with continuation of the federal Motor Carrier Safety Assistance program and with the requirements of the Secretary of Health and Environment pertaining to the transportation of hazardous waste."

Mr. Tom Whitaker of the Kansas Motor Carriers Association, testified in support of SB-21. (See Attachment 4) He said the bill would provide for uniformity between Kansas regulations and the federal regulations governing the safety requirements of the highway transportation industry.

Captain David Hornbaker of the Kansas Highway Patrol said they support SB-21.

The hearing on SB-21 was ended.

The next order of business was a hearing on SB-181 concerning tunneling, excavating and discharging of explosives.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Transportation,
room 519-S, Statehouse, at 1:30 ~~a.m.~~ p.m. on March 19, 1985.

Mr. Don Elliott, Kansas Gas and Electric Company, appeared in support of SB-181. (See Attachment 5)

Mr. Elliott noted he is the Chairman of the Operating Committee of the Kansas One-Call System, Inc., and the purpose of the system is to protect underground facilities from destruction, damage or dislocation. He further explained the concept of Kansas One-Call is to provide one toll free number for any excavator within the state to call 48 hours prior to the start of work. The information is received at a central office, where utility locations are checked and all member utilities who have facilities in the area of excavation are notified. He said the utilities then mark or flag their facilities before the excavator begins work.


Mr. Elliott distributed copies of a balloon showing suggested amendments to SB-181. (See Attachment 6)

Chairman Crowell asked if there would be any change in liability if this bill was passed. Mr. Elliott said there would be no change in liability.

Mr. Don Low of the Kansas Corporation Commission testified favorably concerning SB-181.

The hearing on SB-181 was ended.

The meeting was adjourned at 3:05 p.m.


Rex Crowell, Chairman

GUEST LIST

COMMITTEE: Transportation

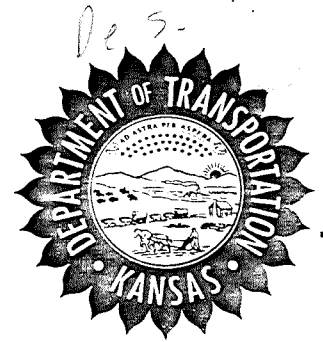
DATE: 3-19-85

PLEASE PRINT

NAME	ADDRESS	COMPANY/ORGANIZATION
Ken Russell	Topeka	KLP Gas Ass'n.
Gene Perrell	"	KPL
John Stanton	TOPEKA	Northern Natural Gas
Pat Hubbard	Topeka	Kansas Railroad Ass'n.
Ron CALBERT	NEWTON	United TRANSPORTATION Union
Jerry Conrad	TOPEKA	KGE&E
DAN R. MCGEE	GREAT BEND	WESTERN POWER/CENTEL
Tom Whitaker	Topeka	Ks Motor Carriers Ass'n
Michael Wolf	Lawrence	Intern. - Sen. Mark's
Kenn Robertson	TOPEKA	KPL/GSC
Don Low	"	KCC
DON Elliott	K.G.E.E. - Wichita	KEE
D. WAYNE ZIMMERMAN	TOPEKA	THE ELECTRIC CO'S ASSOC. OF KS.
Bernard Ruddick	Wichita	KGE&E
PAUL R. GUEVARA	TOPEKA	KDOT
Edward J. Jajin	Topeka	Dept. of Transportation
Charles V. Haman	Forbes Field - Topeka	KDH&E
Larry Knoche	Forbes Field	KDHE
David Weinbraker	TOPEKA	KHP
Wan Prine	Overland Park, Ks.	PANHANDLE EASTERN
Tom Bartolazzi	P.O. Box 1348 Kansas City, MO	PEPL
Heroy Jones	Overland Park	B. L. E.
Mike Germann	Topeka	Ks Railroad Association

KANSAS DEPARTMENT OF TRANSPORTATION

STATE OFFICE BUILDING—TOPEKA, KANSAS 66612



JOHN B. KEMP, Secretary of Transportation

JOHN CARLIN, Governor

MEMORANDUM TO: HOUSE TRANSPORTATION COMMITTEE
FROM: KANSAS DEPARTMENT OF TRANSPORTATION
REGARDING: SENATE BILL 21, AS AMENDED
DATE: MARCH 19, 1985

I. SUMMARY

SENATE BILL 21 WAS INTRODUCED BY THE SPECIAL COMMITTEE ON TRANSPORTATION AS A PRODUCT OF HEARINGS HELD DURING THE 1984 INTERIM ON PROPOSAL NO. 44 - TRANSPORTATION OF HAZARDOUS AND RADIOACTIVE MATERIALS. SECTION 1 OF THE BILL AUTHORIZES THE KANSAS CORPORATION COMMISSION TO ADOPT SUCH RULES AND REGULATIONS AS ARE NECESSARY TO ENSURE CONTINUATION OF THE FEDERAL MOTOR CARRIER SAFETY ASSISTANCE PROGRAM (MCSAP). SUCH REGULATIONS WOULD IN EFFECT BE THE FEDERAL REGULATIONS ON HAZARDOUS MATERIALS TRANSPORTATION FOUND AT 49 CFR 171 ET. SEQ. SECTION 2 OF THE BILL RESTORES LANGUAGE TO K.S.A. 8-1746, INADVERTANTLY STRICKEN LAST SESSION, WHICH PROVIDES THE SECRETARY OF TRANSPORTATION WITH THE DISCRETIONARY AUTHORITY TO PROMULGATE RULES AND REGULATIONS ON THE TRANSPORTATION OF HAZARDOUS MATERIALS.

II. COMMENTS

THE DEPARTMENT SUPPORTS THE PROVISIONS OF SENATE BILL 21, AS AMENDED, AND REQUESTS IT BE CONSIDERED FAVORABLY.

III. FISCAL IMPACT

SENATE BILL 21 WOULD NOT IMPACT THE KANSAS DEPARTMENT OF TRANSPORTATION OVER AND ABOVE THE GOVERNOR'S BUDGET RECOMMENDATION.

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Attach. 1



JOHN CARLIN
MICHAEL LENNEN
MARGALEE WRIGHT
KEITH R. HENLEY
JUDITH A. McCONNELL
BRIAN J. MOLINE

Governor
Chairman
Commissioner
Commissioner
Executive Secretary
General Counsel

State Corporation Commission

Fourth Floor, State Office Bldg.
Ph. 913 296-3355
TOPEKA, KANSAS 66612-1571

STATEMENT PRESENTED ON MARCH 19, 1985, TO THE HOUSE
TRANSPORTATION COMMITTEE BY THE STATE CORPORATION
COMMISSION OF KANSAS ON SENATE BILL NO. 21

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, I AM BILL GREEN, ADMINISTRATOR OF THE TRANSPORTATION DIVISION OF THE STATE CORPORATION COMMISSION. I APPEAR HERE TODAY REPRESENTING THE COMMISSION IN SUPPORT OF SENATE BILL NO. 21.

SENATE BILL NO. 21 IS THE RESULT OF THE INTERIM HEARINGS ON THE TRANSPORTATION OF HAZARDOUS MATERIALS IN KANSAS.

THIS BILL WAS RECOMMENDED BECAUSE THE EXISTING STATUTES AUTHORIZING THE ADOPTION OF RULES AND REGULATIONS FOR MOTOR CARRIERS (K.S.A. 66-1,129) DOES NOT SPECIFICALLY AUTHORIZE THE COMMISSION TO ADOPT RULES AND REGULATIONS REGARDING THE TRANSPORTATION OF HAZARDOUS MATERIALS.

LINE 0050 THROUGH 0052 MANDATES THE COMMISSION ADOPT RULES AND REGULATIONS WHICH WILL ALLOW THE COMMISSION TO PARTICIPATE IN THE FEDERAL MOTOR CARRIER SAFETY ASSISTANCE PROGRAM.

THE ONLY OTHER COMMENTS I HAVE REGARDING SENATE BILL NO. 21 IS TO SUGGEST TO THE COMMITTEE THAT AN AMENDMENT BE ADDED TO CLARIFY THE STATE'S PARTICIPATION IN THE PROGRAM REFERENCED IN LINES 0050 - 0052.

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THE AMENDMENT RECOMMENDED IS AS FOLLOWS:

- (6) MOTOR CARRIER TRANSPORTATION REQUIREMENTS THAT ARE CONSISTENT WITH CONTINUATION OF THE MOTOR CARRIER SAFETY ASSISTANCE PROGRAM AUTHORIZED BY SECTION 401 - 404 OF THE SURFACE TRANSPORTATION ASSISTANCE ACT OF 1982, (PL. 97-424).

AT THIS TIME SHOULD YOU HAVE ANY QUESTIONS, I WILL ATTEMPT TO ANSWER THEM.

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KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

TESTIMONY ON S.B. 21

HOUSE TRANSPORTATION COMMITTEE

MARCH 19, 1985

This is the official position taken by the Kansas Department of Health and Environment on S.B. 21.

BACKGROUND INFORMATION:

Senate Bill 21 is requiring the Kansas Corporation Commission to adopt motor carrier transportation requirements that are consistent with the continuation of the federal Motor Carrier Safety Assistance Program (MCSAP). In December 1983, Governor Carlin formed a Cabinet Subcommittee on Motor Carrier Safety composed of the Secretaries of Health and Environment, Administration, Transportation and Revenue; the Chairman of the Corporation Commission; the Adjutant General; and the Kansas Highway Patrol. The Secretary of Transportation chaired the Committee. The outgrowth of the Committee effort was to:

- (1) Seek Kansas primacy for the federal Motor Carrier Safety Assistance Program with the Kansas Highway Patrol as lead agency.
- (2) Develop a state enforcement plan as a part of the primacy application.
- (3) Develop regulations dealing with both motor carrier safety and the transportation of hazardous materials. Currently, only the Federal Department of Transportation regulates the transportation of hazardous materials.
- (4) The Committee decided the Kansas Corporation Commission was the appropriate agency to adopt rules and regulations so that the state would have the necessary regulations to assume primacy for MCSAP. The KCC already had a regulatory framework in place, however, statutory authority is needed to adopt regulations on motor carrier safety as scoped by the federal requirements.

STRENGTHS:

The Kansas Corporation Commission already have statutory and regulatory responsibility for a number of motor carrier activities. The KCC also works closely with the Kansas Highway Patrol to enforce current motor carrier regulations. The Kansas Highway Patrol will be lead agency insofar as the MCSAP

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primacy is concerned, however, the strength of Senate Bill 21 really lies in the fact that the additional authority given the KCC is just an enhancement of what it already has. This should help establish continuity of new program elements with the existing KCC regulatory activities.

WEAKNESSES:

- (1) Section 2 of Senate Bill 21 gives the Secretary of Transportation enabling legislation to adopt rules and regulations relating to certain motor carrier activities, primarily the safe transportation of hazardous materials. This seems to be a duplication of authority which the measure gives the Kansas Corporation Commission in Section 1(a)(6) of this bill. The statute, as written, doesn't require the Secretary of Transportation to adopt regulations as was the case when K.S.A. 1984 Supp. 8-1746 was passed; it states the Secretary may adopt.
- (2) Senate Bill 21 is unclear as to what role the Secretary of Health and Environment has in regulating transportation of hazardous waste as it relates to the MCSAP regulations adopted by KCC through this measure. Perhaps Section 1 (a)(6) should be changed to recognize the authority of the Secretary of Health and Environment as hazardous waste regulatory authority.

DEPARTMENT'S POSITION:

The Department of Health and Environment is supportive of the Motor Carriers Safety Assistance Program and is looking forward to participating in the implementation of that portion of activities which apply to hazardous waste generators transportation and management. In that respect, KDHE favors passage of Senate Bill 21. The Department recommends, however, that Section 1(a)(6) be amended to read "Motor carrier transportation requirements that are consistent with continuation of the federal Motor carrier safety assistance program and with the requirements of the Secretary of Health and Environment pertaining to the transportation of hazardous waste."

STATEMENT

By The

KANSAS MOTOR CARRIERS ASSOCIATION

Concerning Senate Bill No. 21 relating to the transportation of hazardous materials and the adoption of rules and regulations by the State Corporation Commission.

Presented to the House Transportation Committee, Rep. Rex Crowell, Chairman; Statehouse, Topeka, Tuesday, March 19, 1985.

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I am Tom Whitaker, Governmental Relations Director of the Kansas Motor Carriers Association with offices in Topeka. I appear here today representing the 1,550 member-firms of the Association and the highway transportation industry.

A Post Audit Report dealing particularly with the effectiveness of a "response" system and responsibility of a "lead agency" in the event of an emergency with hazardous material transportation in Kansas, was received by the 1984 Interim Transportation Committee.

The report recommended that the State Corporation Commission adopt the federal rules and regulations governing the transportation of hazardous materials so long as such regulations are not contrary to Kansas statutes.

The Interim Transportation Committee, after conducting extensive hearings, agreed with the report and instructed the KCC to adopt such regulations. The Commission now is in the process of complying with this directive. A major difficulty apparently lies with the Commission's ability to secure copies of the publications to which the federal regulations refer. A copy of such documents must be available at the Commission to comply with Kansas procedures governing the adoption of federal rules and regulations by reference.

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The Kansas Motor Carriers Association publicly has offered to assist the Commission in securing those publications referenced in the federal rules and regulations. The Association reaffirms this offer to provide every appropriate assistance to the Commission to expedite adoption of the federal rules and regulations in the transportation of hazardous materials.

Adoption of the federal rules and regulations on the transportation of hazardous materials and adoption by the KCC of the federal motor carrier safety rules and regulations will allow Kansas to participate in the Motor Carrier Safety Assistance Program. This is the grant program available from the federal government to fund increased enforcement and inspection activity of motor carriers operating in Kansas.

The positive effect of this Interim Committee recommendation on the motor carrier industry in Kansas is a better safety performance on roads and highways and uniformity in the requirements for operation of motor vehicles between Kansas and other jurisdictions.

The Kansas Motor Carriers Association fully supports passage of Senate Bill No. 21 as it passed the Senate. The bill would provide for uniformity between Kansas regulations and the federal regulations governing the safety requirements of the highway transportation industry.

We thank you for the opportunity to offer testimony to the Committee today. I will be pleased to respond to any questions you may have.

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Mr. Chairman and Members of the Committee:

My name is Don Elliott. I am Regional Manager-Wichita with Kansas Gas and Electric Company. I appear here before you as Chairman of the Operating Committee of the Kansas One-Call System, Inc., in support of S.B. 181.

The purpose of Kansas One-Call System, Inc., and that of S.B. 181 is to protect underground facilities from destruction, damage or dislocation in order to prevent death and injury to persons, damage to private and public property and the loss or curtailment of use of services.

The concept of Kansas One-Call is simple. Any excavator, within the state, 48 hours prior to the start of work, calls a toll-free number. The information is received at a central office, where utility locations are checked and all member utilities who have facilities in the area of excavation are notified. The utilities then mark or flag their facilities before the excavator begins work.

The Kansas One-Call System, Inc., was chartered as a non-profit corporation in October 1983, for the purpose of implementing and operating a statewide one-call damage prevention program.

Kansas One-Call had its beginning in 1982 when the Kansas Corporation Commission called a meeting of public utilities to explore the establishment of a statewide system as a means of complying with federal legislation that mandated the

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establishment of a damage prevention program for natural gas pipeline operators and distributors. Since a successful local one-call system had been in operation in Wichita for several years, the Chairman of that organization was asked to head up a steering committee to explore the possibility of establishing a similar system, statewide. That committee effort resulted in the present Kansas One-Call System, Inc.

Kansas One-Call became operational in Wichita on August 15, 1984 and at present has over 90 members who operate every type of pipeline imaginable, from petroleum products to cable television. During this 6 months of operation, Kansas One-Call has received over 26,000 locate requests. We have a toll-free number, which is 1-800-DIG-SAFE and we have developed a fee structure which makes membership affordable to all.

State one-call systems are not new. As of 1981, there were 106 one-call notification centers operating in some 40 states. Seventeen operated on a state-wide basis. The other 89 operate within a given area of a state. Some 23 states of the 40 with one-call systems have enacted legislation requiring notification prior to excavation. States that have one-call systems have experienced reductions in property damage from 20% to 60%.

S.B. 181 is a major step forward in the prevention of damage to underground facilities for not only Kansas One-Call System, Inc. members, but for every operator of underground facilities in Kansas.

Further, it would provide assurance to every excavator that their planned work would be expedited through the notification and location process.

We encourage the adoption of S.B. 181

SENATE BILL No. 181

By Committee on Transportation and Utilities

0017 AN ACT concerning tunneling, excavating and discharging of
0018 explosives; notice; damages; penalties.

0019 *Be it enacted by the Legislature of the State of Kansas:*

0020 Section 1. As used in this act:

0021 (a) "Damage" means any impact or contact with an under-
0022 ground facility, its appurtenances or its protective coating, or
0023 weakening of the support for the facility or protective housing,
0024 which requires repair;

0025 (b) "Emergency" means any condition constituting a clear
0026 and present danger to life or property, or a customer service
0027 outage;

0028 (c) "Excavation" means any operation in which earth, rock,
0029 or other material below ground, is moved or otherwise displaced
0030 by any means, but not including the tilling of soil for agricultural
0031 purposes or ~~for road and ditch maintenance that does not change~~
0032 the original ~~road grade or ditch flowline;~~

railroad,

railroad grade,

0033 (d) "Facility" means any underground line, system or struc-
0034 ture used for producing, gathering, storing, conveying, transmit-
0035 ting or distributing communication, electricity, gas, petroleum,
0036 petroleum products, hazardous liquids, water, steam, sewage, or
0037 any other similar commodities;

0038 (e) "Marking" means the use of stakes, paint or other clearly
0039 identifiable materials to show the field location of underground
0040 facilities, in accordance with the current color code standard of
0041 the American public work association;

0042 (f) "Operator" means any person who owns or operates an
0043 underground facility, except for any person who is the owner of
0044 real property, wherein are located underground facilities for the
0045 purpose of furnishing services or materials only to such person or

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16 occupants of such property;

0047 (g) "Person" means an individual, partnership, corporation,
0048 association, franchise holder, state, city, county or any govern-
0049 mental subdivision or instrumentality of a state and its employ-
0050 ees, agents or legal representatives; and

0051 (h) "Working day" means every day, except Saturday, Sun-
0052 day, or a legal local, state or federal holiday.

0053 Sec. 2. A person shall not excavate, tunnel or discharge ex-
0054 plosives in a street, highway or public place, a private or public
0055 easement or near the location of an underground facility without
0056 having first ascertained, in the manner prescribed in this act, the
0057 location of all underground facilities in the proposed area of
0058 excavation, tunneling or discharging of explosives.

0059 Sec. 3. A person responsible for excavating, tunneling or
0060 discharging explosives in a street, highway or ~~other~~ public place
0061 shall serve notice of intent to excavate, tunnel or discharge
0062 explosives at least two full working days, but not more than 10
0063 working days, before commencing the excavating, tunneling or
0064 discharging of explosives, on operators having underground fa-
0065 cilities located in the proposed area of excavation, tunneling or
0066 discharging of explosives.

0067 The notice of intent shall contain the name, address and
0068 telephone number of the person filing the notice of intent, the
0069 name of the person performing the excavation, tunneling or
0070 discharging of explosives, the date, type and location of the
0071 excavation, tunneling or discharging of explosives.

0072 Sec. 4. In areas where two or more operators of underground
0073 facilities have formed an association providing for mutual receipt
0074 of notification of ~~construction~~ activities, notification to the asso-
0075 ciation may be effected as provided by ~~this act~~, or by telephone
0076 call, providing the same information as required by ~~this act~~ by
0077 ~~the person responsible for excavating, tunneling or discharging~~
0078 ~~explosives~~. If notification is made by telephone, an adequate
0079 record shall be maintained by the association to document com-
0080 pliance with the requirements of this act.

0081 Sec. 5. ~~An operator served with the notice above shall, not~~
0082 ~~less than one working day in advance of the proposed construc-~~

*a private or public easement or near the location of an
underground facility*

excavation

in Sec. 3 of this

*to the association's established office, by the
person responsible for the excavation activities,*

Section 3 of this

0083 tion, unless otherwise agreed between the parties, inform the
 0084 person of the approximate location of the underground facilities
 0085 owned and operated in the area of excavation, tunneling or
 0086 discharging of explosives, in a manner as to enable the person to
 0087 employ hand-dug test holes or other means of establishing the
 0088 precise location of the underground facilities in advance of
 0089 construction or excavation. If the precise location of the under-
 0090 ground facilities cannot be established, the person shall then
 0091 notify the operator, who shall provide further assistance needed
 0092 to determine the precise location of the underground facility in
 0093 advance of the proposed excavation, tunneling or discharging of
 0094 explosives.

0095 Sec. 6. In the case of emergency involving danger to life,
 0096 health or property or which requires immediate correction in
 0097 order to continue the operation of a major industrial plant, or to
 0098 assure the continuity of public utility service, excavation, main-
 0099 tenance or repairs may be made without using explosives if
 0100 notice and advice thereof, in writing or otherwise, is given to the
 0101 operator or association as soon as reasonably possible.

0102 Sec. 7. This act shall not be construed to authorize, affect or
 0103 impair local ordinances, charters or other provisions of law
 0104 requiring permits to be obtained before excavating or tunneling
 0105 in a public street or highway. A permit issued by a public agency
 0106 shall not be deemed to relieve a person from the responsibility
 0107 for complying with the provisions of this act.

0108 Sec. 8. Upon receiving the information provided for in sec-
 0109 tions 4 or 5, a person excavating, tunneling or discharging ex-
 0110 plosives shall exercise reasonable care when working in close
 0111 proximity to any underground facilities. If the facilities are to be
 0112 exposed, or are likely to be exposed, only hand digging shall be
 0113 employed in such circumstances and such support as may be
 0114 reasonably necessary for protection of the facilities shall be
 0115 provided in and near the construction area.

0116 Sec. 9. When any contact with or damage to any pipe, cable,
 0117 or its protective coating, or any other underground facility of an
 0118 operator occurs, the operator shall be notified immediately by
 0119 the person responsible for the operations causing the damage.

New Sec. 5. An operator served with notice shall, not less than one working day in advance of the proposed excavation, unless otherwise agreed between the parties, by marking, flagging, or by other acceptable methods, inform the person responsible for the excavation of the approximate location of the underground facilities owned and operated in the area of planned excavation. Such marking shall be done in a manner as to reasonably enable the person responsible for the excavation to employ hand-dug test holes or other means of establishing the precise location of the underground facilities in advance of the excavation. If the precise location of the underground facilities cannot be established, the person responsible for the excavation shall then notify the operator, who shall promptly provide further assistance needed to determine the precise location of the underground facility in advance of the proposed excavation activity.

0120 Upon receiving the notice, the operator shall dispatch personnel
0121 to the location as soon as possible to effect temporary or perma-
0122 nent repairs of the damage. If a serious electrical short is occur-
0123 ring, or if dangerous fluids or gases are escaping from a broken
0124 line, the person responsible for the operations causing the dam-
0125 age shall evacuate the immediate area while awaiting the arrival
0126 of the operator personnel.

0127 Sec. 10. In a civil action in a court of this state, when it is
0128 shown by competent evidence that damage to the underground
0129 facilities of an operator resulted from excavating, tunneling or
0130 discharging of explosives as described in section 2, and that the
0131 person responsible for giving the notice of intent to excavate,
0132 tunnel or discharge explosives failed to give the notice, or the
0133 person did not employ hand digging or failed to provide support,
0134 the person shall be deemed prima facie guilty of negligence.

0135 Sec. 11. A person who damages the facilities of an operator
0136 on more than three occasions on any one construction contract
0137 location because of such person's failure to comply with any of
0138 the provisions of this act may be enjoined from engaging in any
0139 further excavating, tunneling or discharging of explosives within
0140 the state, except under such terms and conditions as the court
0141 may prescribe to ensure the safety of the public. A court may
0142 prescribe such penalties as it deems necessary or appropriate for
0143 violation of the injunctive order up to a maximum of \$1,000 per
0144 violation. All penalties recovered in such actions shall be de-
0145 posited in the state general fund.

0146 Sec. 12. Willful violation of this act is an unclassified mis-
0147 demeanor punishable by a fine of not more than \$1,000 for each
0148 offense. Any such penalty is in addition to any civil liability. A
0149 person who willfully removes or otherwise destroys the stakes or
0150 other physical markings used by an operator to mark the approx-
0151 imate location of underground facilities is guilty of a Class A
0152 misdemeanor.

0153 Sec. 13. If any provisions of this act or the application
0154 thereof to any person or circumstance is held invalid, the re-
0155 mainder of the act and the application of such provision to other
0156 persons or circumstances shall not be affected thereby.

major change in policy

except for necessary construction activity or upon completion of construction

157 Sec. 14. This act shall take effect and be in force from and
0158 after its publication in the statute book.