

MINUTES OF THE SENATE UTILITIES COMMITTEE.

The meeting was called to order by Chairman Senator Stan Clark at 9:30 a.m. on February 14, 2002 in Room 231-N of the Capitol.

All members were present except:

Committee staff present: Raney Gilliland, Legislative Research
 Emalene Correll, Legislative Research
 Bruce Kinzie, Revisor of Statutes
 Ann McMorris, Secretary

Conferees appearing before the committee:

 Leo Haynos, Kansas Corporation Commission
 George Melling, Kansas Gas Service
 Jim Bartling, Greeley Gas Company
 David Backer, Southwestern Bell Telephone Company
 Jim Tyler, Westar Energy
 John Parisi, Kansas Trial Lawyers Association

Others attending: See attached list

The committee was provided copies of:

1. Fiscal note on **SB 490**
2. Committee Action Index
3. Response from Kansas City Power & Light to question at January 24, 2002 meeting
 (Attachment 1)

The Chairman opened the meeting for testimony on

SB 490 - Kansas underground utility damage prevention act, regulations

Proponents

Leo Haynos, Kansas Corporation Commission, gave a brief overview of the Act and some of the history, recommended one change in the bill as written and reviewed the three significant new requirements proposed in the revisions. (Attachment 2)

George Melling, Kansas Gas Service, asked the committee to consider two additional amendments to the KUUDPA that they believed necessary to correct two serious deficiencies in the existing statutory language. (Attachment 3)

Jim Bartling, Greeley Gas Company, supported the amendments proposed by Kansas Gas Service. (Attachment 4)

David Backer, Southwestern Bell Telephone Company, proposed several amendments and changes in the language to clarify the obligations placed on excavators and utility operators. (Attachment 5)

Jim Tyler, Westar Energy, supported **SB 490**. (Attachment 6)

Opponent

John Parisi, Kansas Trial Lawyers Association, opposed **SB 490** because it grants immunity to an excavator who negligently injures an innocent third party. He offered language to correct this deficiency. (Attachment 7)

Written testimony from Janet Stubbs, Kansas Building Industry (Attachment 8)

CONTINUATION SHEET

MINUTES OF THE SENATE UTILITIES COMMITTEE at on February 14, 2002 in Room 231-N of the Capitol.

The committee asked questions of each conferee following their presentations.

On completion of the testimony from the proponents and opponents, Chairman Clark asked that all the proposed amendments be looked at by those testifying and additional written or oral testimony could be presented when the hearing continued on Wednesday, February 20, 2002.

The next meeting of the Senate Utilities Committee is February 20, 2002.

Adjournment.

Respectfully submitted,

Ann McMorris
Secretary

Attachments - 8

SENATE UTILITIES COMMITTEE GUEST LIST

DATE: FEBRUARY 14, 2002

Name	Representing
LEO HAYNOS	KANSAS CORPORATION COMMISSION
Ron Appletoft	WaterOne
JIM BARTLING	GREELEY GAS CO / ATMOS ENERGY CORP
Jim IRONS	SOUTHWESTERN BELL
David Backer	Southwestern Bell
Terry Diebolt	Southwestern Bell
Bob Jaycox	Connect Kansas
BILL HAISLIP	KANSAS CORPORATION COMM.
Panda Lentz	KCC
Jack Graves	Duke - P7N & Kinder Morgan
Ron Gaches	GSBA
MARK SCHREIBER	Westar Energy
Steve Johnson	Kansas Gas Service
JIM TYLER	WESTAR ENERGY
TOM SHIMON	KANSAS ONE CALL
BOB ANDERSON	ATMOS ENERGY
Whitney Jamron	FS Gas Service



Kansas City Power & Light®

Status of public hearings
on the placement of Combustine Turbines
at the West Gardner Substation

*In answer to question raised at the Joint Meeting
of House and Senate Utilities Committees, January 24, 2002*

KCPL is seeking a Conditional Use Permit to locate up to four Combustine Turbines (CTs) at the West Gardner Substation. This is located west of Highway 56 between Gardner and Edgerton, Kansas.

January 28: Final public hearing before the McCamish Township Zoning Board. The Zoning Board voted to recommend denial of the Conditional Use Permit for the CTs.

February 21: Hearing on the Conditional Use Permit before the Johnson County Board of County Commissioners. Approval is expected.

2/1/02

Senate Utilities Committee
February 14, 2002
Attachment 1-1

**Before the Senate Utilities Committee
Comments by the
Staff of the Kansas Corporation Commission
February 14, 2002**

Senate Bill 490

Thank you Mr. Chair and members of the Committee. I am Leo Haynos, Chief of Pipeline Safety for the Kansas Corporation Commission and I am appearing today on behalf of the KCC Staff.

The Commission Staff supports Senate Bill 490 which proposes several minor revisions to the Kansas Underground Utility Damage Prevention Act. This act is also known by its acronym KUUDPA or simply the One Call law.

Before I begin discussing the bill, I would like to give a brief overview of the Act and some of its history. In Kansas, there are roughly 154,000 miles of underground utility lines, not counting water and sewer facilities, that are buried. This includes not only gas lines, but also almost all phone lines, cable television, and fiber optic communication lines, as well as electric service lines. In fact, most new housing developments place all utility lines underground.

In the One Call statutes, there are two primary groups affected by the law's requirements: Excavators, and operators of underground utilities.

At the heart of underground utility damage prevention is the need for accurate and consistent communication between excavators and operators. Typically, an excavator planning to dig has no knowledge of who may have buried facilities in the area intended for excavation. He depends on the call center, operated by Kansas One Call, Inc., to notify all operators of buried facilities at his work site. The call center has electronic maps of the underground facilities of all its members. After being called by the excavator, the center sends a message or a "ticket" to the utilities to alert them of possible digging near their facilities. In order to protect their facilities and to prevent accidents, the utilities respond by placing flags or paint marks on top of the ground that indicate the location of their facilities. In theory, this is a clear cut operation. However, as requests for locates increase and the underground becomes more congested, the communication link between excavators and operators becomes strained at best and, at times, breaks down.

Until 1993, excavator use of the call center and utility membership in the center were voluntary. In 1993, the Kansas Underground Utility Damage Prevention Act was passed requiring excavators to call before digging. It also made membership in the call center mandatory for all underground facility operators except water, sewer, and some oil field production lines. As a result, the number of requests for locates increased dramatically

once the use of the call center became mandatory.

In 2001, the call center received 483,000 calls from excavators. Each call typically generates 5 locate requests to facility operators, since there is usually more than one type of facility in the ground at any given place. Last year, the call center informed utility operators 2,600,000 times that an excavator was planning to dig near their facilities, and that those facilities, consequently, required location markings.

Although the system generally works well considering the volume of use, Kansas utilities still suffered over \$4 million of damage in 2000. The main concern however, is not the money lost because of damaged utilities. The main concern is safety and continuity of service. Safety of the excavator while digging is an immediate consideration along with safety of the public. The highest safety concerns would be those dealing with electric and gas utilities, but water contamination is also a potential risk, as is phone line damage, that may prohibit 911 communications.

During the year 2000, in response to House Resolution 6011, the KCC Staff began an effort to study the effectiveness of the Kansas One Call law. This effort grew into a task force made up of 48

individuals representing all of the various stakeholder groups affected by the One Call law. Last year, the KCC staff sponsored legislation in the House which incorporated all of the recommendations of the task force. HB2521 proposed removing most of the exemptions for water, sewer, and oil production facilities. It also proposed a large number of revisions that dealt with the logistics of day to day operations of the law. This approach of combining all of the task force's recommended revisions in one bill resulted in a bill that was controversial in part and, at best, can be described as complicated. In the final days of last year's legislative session, HB 2521 failed on the house floor on a vote to go to final action, and it was stricken from the house calendar on May 2, 2001.

Before I briefly discuss the details of the bill, I would like to recommend one change to the bill as it is now written. In the definition of the term, "Marking", I recommend striking lines 2 through 4 of page 2 and replacing it with "in accordance with rules and regulations promulgated by the state corporation commission in support of this act." It has come to my attention that the utility location coordination council of the American Public Works Association is no longer active. The language KCC staff is proposing

will provide flexibility to the definition of marking and allow us to fit the definition to Kansas' needs. Attached to my testimony is a comparison of the bill's current language and the recommended change.

For SB 490, KCC staff has taken an approach different from HB 2521 in proposing modifications to the One Call law. For the most part, the changes proposed in SB490 are editorial changes that clarify or update the original intent of the statute, or in some cases, formalize the interpretations that the KCC Staff has developed over the last seven years. Three significant new requirements have also been added to the statute that are intended to enhance public safety. In conjunction with SB 490, the KCC staff is preparing regulations that address the task force's recommendations on the best practices for routine operations. The proposed regulations will supplement the statute and provide specific instructions for the daily operation of the One Call law. The KCC staff expects to submit the proposed regulations to the joint committee on administrative rules and regulations upon passage of this bill.

SB 490 does not contain the controversial sections of HB 2521 that required water, sewer, and oil and gas production facilities to

become members of One Call. The KCC staff feels it would be more appropriate to allow these issues to be debated on their own merit at a later date.

The three significant new requirements that are proposed in the statute revisions are:

- 1. A requirement for the operator to provide response to the excavator that he has reviewed the dig site before the two day deadline;**
- 2. A requirement that the operator provide utility location marks within two hours in the event of an emergency; and**
- 3. A requirement that excavators using trenchless excavation techniques, such as boring, meet minimum operating guidelines that will be prescribed in regulations.**

In summary, the KCC Staff believes the changes proposed in SB 490 will serve to update the One Call statutes and enhance the safety of excavating near underground facilities. The incorporated changes will also serve as a foundation on which to build regulations for more effective administration of the One Call law.

This concludes my testimony, and I will now stand for questions.

SENATE BILL 490

PROPOSED LANGUAGE

<p>Page 1, Line 43 through Page 2, Lines 1-4</p> <p>(f) (g) "Marking" means the use of stakes, paint, <i>flags</i> or other clearly identifiable materials to show the field location of underground facilities, in accordance with the resolution adopted August, 1984, by resolutions of the utility location coordination council of the American public work association.</p>	<p>Page 1, Line 43 through Page 2, Lines 1-4</p> <p>(f) (g) "Marking" means the use of stakes, paint, <i>flags</i> or other clearly identifiable materials to show the field location of underground facilities, in accordance with the resolution adopted August, 1984, by resolutions of the utility location coordination council of the American public work association. <u>rules and regulations promulgated by the state corporation commission in support of this act.</u></p>
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KANSAS GAS SERVICE

A DIVISION OF ONEOK

**Before the Senate Utilities Committee
Testimony of George Melling
Manager, Claims and Worker's Compensation
Kansas Gas Service, a Division of ONEOK
SB 490
February 14, 2002**

Chairman Clark and members of the Committee. Thank you for the opportunity to address you in support of SB 490. Kansas Gas Service is in general agreement with the amendments to the Kansas Underground Utility Damage Prevention Act (KUUDPA) proposed in this bill.

Kansas Gas Service would like the Committee to consider two additional amendments to the KUUDPA that we believe are necessary to correct two serious deficiencies in the existing statutory language. These problems with the KUUDPA came to light over the past two years during the course of a KCC complaint and related civil litigation filed by an excavating contractor in the Kansas City area.

By way of background, the excavating contractor filed a KCC complaint, at the same time filing a civil action for damages in Johnson County District Court, alleging that the gas and electric utilities and cable television companies in the Kansas City area had failed to timely mark underground facilities upon request of the excavator within two working days as required by K.S.A. 2000 Supp. 66-1806. The excavator claimed that the failure to mark within two days constituted a violation of KUUDPA and raised a rebuttable presumption of negligence on the part of the utility. The excavator alleged over 6,000 instances of "missed locates" within a three-year period. The excavator sought economic damages for each of the 6,000+ occurrences resulting from lost profits and expenses. Because the excavator waited over three years before making its claim, the KCC, the Court and the parties had to review each of the 6,000 locates to determine if there was any violation. This proved to be an impossible task.

The utilities filed to dismiss the civil action in Johnson County District Court alleging that the KCC had primary jurisdiction to determine if violations of KUUDPA had occurred. The District Court disagreed, stating that it was not specifically prohibited by statute from determining violations of KUUDPA in the first instance. The case ultimately settled and the KCC complaint was dismissed.

The two amendments below are intended to (1) clarify that failure to meet the two working day deadline of K.S.A. 66-1806 does not give rise to a claim for economic damages; (2) clarify that the KCC has the primary jurisdiction to determine violations of

the KUUDPA; and (3) prohibit an excavator or other person from waiting more than 6 months to bring a complaint under KUUDPA.

Sec. 4. K.S.A. 2001 Supp. 66-1806 is hereby amended to read as follows:

(f) Failure of an operator to inform the excavator within two working days of the tolerance zone of the underground facilities of the operator in the manner required by K.S.A. 2001 Supp. 66-1806(a) shall not give rise to a civil cause of action on the part of the excavator against an operator for economic damages. Such failure may subject an operator to civil penalties as determined by the state corporation commission.

Sec. 10. K.S.A. 2001 Supp. 66-1813 is hereby amended to read as follows:

Administration and enforcement by state corporation commission. This act shall be administered and enforced by the state corporation commission of the State of Kansas. *Any action for civil damages and attorney fees for violation of this act may be filed only after the state corporation commission has determined in a final order that the excavator, utility or other person has violated this act or any regulation established in rules and regulations promulgated by the state corporation commission. Any person claiming that an excavator, utility or other person has violated any provision of this act or any regulation adopted by the state corporation commission, shall be required to file such claim with the state corporation commission within 180 days of becoming aware of the violation.*

COMMENTS OF
JAMES W. BARTLING, MANAGER PUBLIC AFFAIRS
GREELEY GAS COMPANY
BEFORE THE
SENATE UTILITIES COMMITTEE
FEBRUARY 14, 2002

Chairman Clark, Vice-Chairman Emler, and Members of the Senate Utilities Committee:

I appreciate the opportunity to speak before the Senate Utilities Committee in support of the amendments to the Kansas Underground Utility Damage Prevention Act (KUUDPA) proposed by Kansas Gas Service for SB 490.

My name is Jim Bartling and I am Manager of Public Affairs for Greeley Gas Company, a business unit of Atmos Energy Corporation. Under its five business units Atmos serves approximately 1.4 million customers in 10 states. Greeley serves approximately 117,000 customers in 114 communities within 31 counties in the State of Kansas. We are a local distribution company with operations regulated by the Kansas Corporation Commission (KCC).

Greeley concurs with Kansas Gas Service that the two amendments proposed by Kansas Gas Service would correct the deficiencies in the existing statutory language.

We urge the Senate Utilities Committee to accept the amendments proposed by Kansas Gas Service.

This concludes my prepared testimony before the Senate Utilities Committee. I will be happy to answer questions at the appropriate time.

TESTIMONY BY DAVID D. BACKER ON BEHALF OF SOUTHWESTERN BELL TELEPHONE COMPANY TO THE SENATE UTILITY COMMITTEE REGARDING SB 490, FEBRUARY 14, 2002.

Southwestern Bell Telephone is in general agreement with the amendments to the Kansas Underground Utility Prevention Act proposed in SB 490 ("the Act"). We would like to propose the following changes to some of the proposals to clarify the obligations placed on excavators and utility operators. We believe these changes will further the Act's purpose of promoting the safe excavation of areas where underground utilities are present. For each proposal, I will refer to the page and line numbers of SB 490.

1. SB 490 Page 1, Lines 22-27

At the end of this paragraph, add: "Normal agricultural purposes do not include excavation within any right of way or easement in which facilities have been placed."

We agree that farmers should not have to call for a locate each time they to work in their field. However, we believe it is reasonable for a farmer to request a locate if he intends to disk or plow outside of the fence line, in the ditch, etc (in the road right of way).

Further, we would like to see a definition of "normal agricultural purposes". If the farmer wants to till his soil extraordinarily deep, for whatever reason, he should not be exempted from the Act.

2. SB 490 Page 1, Lines 28-31.

We recommend removing the exemption for "occupant of a dwelling". While most homeowners' excavation activities will not be deep enough to reach any underground facilities, activities such as putting in fence posts, etc., are of adequate depth to damage facilities.

3. SB 490 Page 3, Lines 18-20.

Either delete this provision entirely or change it to read:

"No person shall make repeated requests for remarking, unless the request is to update a previous request, or the excavator knows or has reason to know, that the marks have been removed or altered."

We do not want to discourage excavators from requesting re-locates when they are either required to do so because of an expired ticket or when the circumstances justify an additional locate request.

Further, we would propose a duty on the excavator to call for a re-locate in situations where the locate marks have been removed or altered. Therefore, we suggest either adding to this section or replacing it with:

“An excavator shall update its locate request when the excavator knows, or has reason to know, that the markings have been removed or altered.”

This would place a duty on the excavator to call for a re-locate when the excavator knows that a facility is in the area, but the marks have faded or have been obliterated.

4. SB 490 Page 4, Lines 25-30

We propose deletion of “within two working days” in that paragraph. An excavator should immediately request a relocate if it knows the marks are bad.

We also propose the deletion of the word “improperly” from that paragraph. This would not, in many circumstances, address faded marks or marks taken out by excavation, road traffic, weather, etc.

5. SB 490 Page 5, line 37

We recommend leaving in “including damage to any underground facilities”.

We believe that by taking out this language, it is unclear whether the Act intends for the rebuttable presumption of negligence to apply to property damage, i.e. the underground facilities themselves.



**Testimony before the
Senate Utilities Committee**

By

Jim Tyler, Senior Manager, Design and Support Services

Westar Energy

February 14, 2002

Chairman Clark and members of the committee, I am Jim Tyler, senior manager, design and support services for Westar Energy. I have been actively involved in underground damage prevention since 1998, and I serve as chairman of the Operating Committee for Kansas One Call.

Westar Energy completed about 235,000 locate requests in 2001 and is one of the largest excavators in the state with installation of poles, down guys and numerous types of underground facilities throughout our service area.

Westar Energy supports Senate Bill 490. The changes proposed in this bill clarify key issues in regard to marking underground facilities. This bill will help reduce costs associated with locating facilities without encroaching on the purpose of the underground utility damage prevention act and without placing an undue burden on excavators.

Changing the amount of time to perform the locate and extending the ticket life after the locate will serve two important purposes to utilities and excavators. First, it will provide additional time to fulfill locating requests, the volume of which is very sporadic. It is difficult at times to appropriately manage the peaks and valleys of requests to locate. Second, the additional time added to the ticket life from 10 working days to 15 calendar days will reduce our need to remark facilities due to the ticket life expiring.

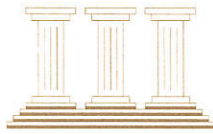
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The use of "whitelining" in poorly defined areas will also benefit utilities and excavators. The addition of this business practice will clarify the exact area of intent to excavate when the excavator is unable to convey the location to the locating service. Whitelining will reduce the utilities time to mark questionable areas and ensures the excavator that the utility marked the entire area of excavation with certainty.

Limits placed on the area to be marked for work completed within 15 calendar days will improve our ability to respond to excavator requests and provide manageable areas to locate facilities within the time restraints of this act. We incur additional costs for locating underground facilities due to repeat requests to mark large areas where excavation cannot be completed within the required time or that need to be remarked due to the end of the ticket life of 10 working days.

Senate Bill 490 is a good example of balancing interest of various parties. Westar Energy supports this measure.

6-2



KANSAS TRIAL LAWYERS ASSOCIATION

Lawyers Representing Consumers

TO: Members of the Senate Utilities Committee

FROM: John Parisi, President Elect
Kansas Trial Lawyers Association

RE: 2002 SB 490

DATE: Feb. 14, 2002

Chairman Clark and members of the committee, thank you for the opportunity to submit comments on SB 490. I am John Parisi, president elect of the Kansas Trial Lawyers Association, and I appear before you today on behalf of our members and the clients whom we represent.

KTLA opposes SB 490 because it grants immunity to an excavator who negligently injures an innocent third party. By granting statutory immunity to negligent excavators, we excuse careless behavior and jeopardize the safety of all Kansans. Such blanket immunity puts all Kansans at risk and excuses those who profit at the expense of safety.

Specifically, Sec. 4(d) provides that if the operator of the utility fails to mark its utilities, the "excavator may proceed and shall not be liable for any direct or indirect damages resulting from contact with the operator's facilities" unless the excavator is guilty of gross negligence or willful or wanton conduct. As a result, this section provides immunity on claims by an injured third party even when the excavator was negligent in performing its excavation.

Sec. 8(a) allows a rebuttable presumption of negligence in an action by an innocent third party for personal injury, death or other damages. However, Sec. 8(b) takes away these protections by providing that Sec. 8(a) "shall not apply if the operator whose underground facilities are damaged fails to participate in the notification center." Again, this provides immunity even where the excavator was negligent.

These provisions are overly broad and give the excavator immunity on claims brought by innocent third parties even where the excavator was negligent in performing the excavation and contributed to cause serious injury. Those who will be most effected by this legislation will be our children, our families, our neighbors and our friends.

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Terry Humphrey, Executive Director

While KTLA does not excuse the failure of the operator to mark its facilities, we believe that granting immunity improperly insulates negligent excavators from accountability for their actions and fails to give excavators incentives to take appropriate and necessary actions to protect the safety of others.

SB 490 provides immunity to excavators who profit from the excavations and who are in the best position to address the safety issues that exist. Excavators should be required to deal with the realities of these safety concerns rather than being responsible for their negligent actions. By excusing such negligent acts, excavators have no incentive to develop safety measures that are necessary to protect the innocent third parties who have been injured by their negligence.

This bill also has the effect of shifting the excavator's negligence to Kansas municipalities and taxpayers who operate public utilities. Under the act, the excavator would not be liable for their own negligence but the municipal operator who failed to mark its utilities would be liable for the injuries caused to the innocent third party even where the excavator was at fault in causing the injuries.

Under this bill, the insult to an injured person will not stop with their injuries but will potentially continue for a lifetime. The injured person(s), their family and/or the State could face a lifetime of financial burdens caused by their injuries while the negligent excavator is spared from liability. In most situations, the excavators are in a much better position to handle the financial impacts of their negligence than the innocent third parties who were injured by the negligence.

Finally, the immunity provided by this bill is unnecessary if the excavator properly performs the excavation because they would not be legally responsible for the injury or damages sustained by an innocent third party. As a result, the bill provides no protection to those who act responsibly but insulates the negligent from accountability for their own irresponsible actions that cause harm to Kansans.

As we have indicated, KTLA opposes this bill as it is currently written. We would therefore offer the attached amendment that addresses our concerns with the bill. If the committee decides to advance the bill, we respectfully request that you adopt our amendment and protect Kansas families.

Thank you for the opportunity to express our serious concerns about this bill.

7-2

SENATE BILL No. 490

By Committee on Utilities

2-4

AN ACT amending the Kansas underground utility damage prevention act; concerning certain regulations thereof; amending K.S.A. 2001 Supp. 66-1802, 66-1804, 66-1805, 66-1806, 66-1807, 66-1809, 66-1810, 66-1811 and 66-1812 and repealing the existing sections.

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

Section 1. K.S.A. 2001 Supp. 66-1802 is hereby amended to read as follows: 66-1802. 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 below the surface is moved or otherwise displaced by any means, except tilling the soil for normal agricultural purposes, 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 production of crude oil or natural gas, or both.

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

(e) "Facility" means any underground line, system or structure used for gathering, storing, conveying, transmitting or distributing gas, electricity, communication, crude oil, refined or processed petroleum, petroleum products or hazardous liquids; facility shall not include, any production petroleum lead lines, salt water disposal lines or injection lines, which are located on unplatted land or outside the corporate limits of any city.

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

(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 ~~resolution adopted August, 1984, by resolutions~~
3 of the utility location coordination council of the American public work
4 association.

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

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

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

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

34 ~~(l)~~ (m) "Person" means any individual, partnership, corporation, as-
35 sociation, franchise holder, state, city, county or any governmental sub-
36 division or instrumentality of a state and its employees, agents or legal
37 representatives.

38 ~~(m)~~ (n) "Tolerance zone" means the area within 24 inches of the
39 outside dimensions in all horizontal directions of an underground facility.

40 (o) "Update" means an additional request from the excavator to ex-
41 tend the time period of the request for intent to excavate beyond the 15
42 calendar day duration of the request.

43 (p) "Whitelining" means the act of marking by the excavator the route

1 or boundary of the proposed excavation site with white paint, white stakes
2 or white flags.

3 ~~(n)~~ (q) "Working day" means every day, except Saturday, Sunday or
4 a legally proclaimed local, state or federal holiday Monday through Friday
5 beginning at 12:01 a.m., except for the following officially recognized hol-
6 idays: New Year's day, Memorial day, Independence day, Labor day,
7 Thanksgiving day, the day after Thanksgiving and Christmas.

8 Sec. 2. K.S.A. 2001 Supp. 66-1804 is hereby amended to read as
9 follows: 66-1804. (a) Except in the case of an emergency, an excavator
10 shall serve notice of intent of excavation at least two full working days,
11 but not more than ~~10 working~~ 15 calendar days before commencing the
12 excavation activity the scheduled excavation start date, on each operator
13 having underground facilities located in the proposed area of excavation.

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

18 (c) No person shall make repeated requests for remarking unless the
19 request is due to circumstances not reasonably within the control of such
20 person.

21 ~~(b)~~ (d) The notice of intent of excavation shall contain the name,
22 address and telephone number of the person filing the notice of intent,
23 the name of the excavator, the date the excavation activity is to commence
24 and the type of excavation being planned. The notice shall also contain
25 the specific location of the excavation if it is to take place within the
26 boundaries of a city or the specific quarter sections if outside the bound-
27 aries of any city.

28 (e) The person filing the notice of intent to excavate shall whieline
29 the proposed excavation site when the description of the excavation lo-
30 cation cannot be described with sufficient detail to enable the operator to
31 ascertain the precise tract or parcel involved.

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

36 Sec. 3. K.S.A. 2001 Supp. 66-1805 is hereby amended to read as
37 follows: 66-1805. (a) This act recognizes the value of and encourages and
38 authorizes the establishment of a single notification center for the state
39 of Kansas. The notification center shall provide prompt notice to each
40 affected member of any proposed excavation. Each operator who has an
41 underground facility shall become a member of the notification center.

42 (b) ~~Upon the establishment of a notification center in compliance~~
43 ~~with this act,~~ Notification, as required by K.S.A. 2001 Supp. 66-1804, and

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1 amendments thereto, to operators shall be given by notifying the notifi-
2 cation center by telephone at the toll free number or by other commu-
3 nication methods approved by the notification center. The content of such
4 notification shall be as required by K.S.A. 2001 Supp. 66-1804, and
5 amendments thereto.

6 (c) Each operator who has an underground facility within the state
7 shall be afforded the opportunity to become a member of the notification
8 center on the same terms as the original members.

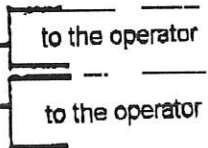
9 (d) A suitable record shall be maintained by the notification center
10 to document the receipt of notices from excavators as required by this
11 act.

12 Sec. 4. K.S.A. 2001 Supp. 66-1806 is hereby amended to read as
13 follows: 66-1806. (a) Within two working days, beginning on the first
14 working day after the excavator has filed notice of intent to excavate, an
15 operator served with notice shall, in advance of the proposed excavation,
16 unless otherwise agreed between the parties, shall inform the excavator
17 of the tolerance zone of the underground facilities of the operator in the
18 area of the planned excavation by marking, flagging or other acceptable
19 method no sooner than two working days prior to planned excavation.

20 (b) If the operator has no underground facilities in the area of the
21 proposed excavation, such operator, before the excavation start date, shall
22 notify the excavator that it has no facilities in the area of proposed ex-
23 cavation by telephone, facsimile, marking the area all clear or by other
24 technology that may be developed for such purposes.

25 (c) If the excavator notifies the notification center, within two
26 working days after the initial identification of the tolerance zone by the
27 operator, that the identifiers have been improperly removed or altered,
28 the operator shall make a reasonable effort to reidentify the tolerance
29 zone within one working day after the operator receives actual notice from
30 the notification center.

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



38 (e) All facilities installed by an operator after January 1, 2003, shall
39 be locatable.

40 Sec. 5. K.S.A. 2001 Supp. 66-1807 is hereby amended to read as
41 follows: 66-1807. (a) In the case of an emergency which involves danger
42 to life, health or property or which requires immediate correction in order
43 to continue the operation of an industrial plant or to assure the continuity

1 of public utility service, excavation, maintenance or repairs may be made
2 without using explosives, if notice and advice thereof, whether in writing
3 or otherwise are given to the operator or notification center as soon as
4 reasonably possible.

5 (b) *If an operator receives a request to locate its facilities for an emer-*
6 *gency condition, such operator shall make a reasonable effort to identify*
7 *the location of its facility within two hours of receiving notification or*
8 *before excavation is scheduled to begin, whichever is later.*

9 (c) *Any person providing a misrepresentation of an emergency ex-*
10 *cavation may be subject to the penalties set out in K.S.A. 2001 Supp. 66-*
11 *1812, and amendments thereto.*

12 Sec. 6. K.S.A. 2001 Supp. 66-1809 is hereby amended to read as
13 follows: 66-1809. (a) Upon receiving information as provided in K.S.A.
14 2001 Supp. 65-1806, and amendments thereto, an excavator shall exercise
15 such reasonable care as may be necessary for the protection of any un-
16 derground facility in and near the construction area when working in close
17 proximity to any such underground facility.

18 (b) *An excavator using a trenchless excavation technique shall meet*
19 *minimum operating guidelines as prescribed in rules and regulations de-*
20 *veloped and adopted by the state corporation commission in support of*
21 *this act.*

22 Sec. 7. K.S.A. 2001 Supp. 66-1810 is hereby amended to read as
23 follows: 66-1810. When any contact with or damage to any underground
24 facility occurs, the operator shall be informed immediately by the exca-
25 vator. Upon receiving such notice, the operator immediately shall dis-
26 patch personnel to the location to provide necessary temporary or per-
27 manent repair of the damage. If the protective covering of an electrical
28 line is penetrated or dangerous gases or fluids are escaping from a broken
29 line, the excavator immediately shall inform emergency personnel of the
30 municipality in which such electrical short or broken line is located and
31 take any other action as may be reasonably necessary to protect persons
32 and property and to minimize hazards until arrival of the operator's per-
33 sonnel or emergency first responders.

34 Sec. 8. K.S.A. 2001 Supp. 66-1811 is hereby amended to read as
35 follows: 66-1811. (a) In a civil action in a court of this state when it is
36 shown by competent evidence that personal injury, death or other dam-
37 ages, including damage to any underground facilities, occurred as a result
38 of a violation of this act, there shall be a rebuttable presumption of neg-
39 ligence on the part of the violator.

40 ~~(b) The provisions of subsection (a) shall not apply if the operator~~
41 ~~whose underground facilities are damaged fails to participate in the no-~~
42 ~~tification center.~~

43 (c) In no event shall the excavator be responsible for any damage to

(b)

1 underground facilities if such damage was caused by the failure of the
2 operator to correctly and properly mark the location of the tolerance zone
3 of the damaged facility.

4 ~~(d)~~ Nothing in this act is intended to limit or modify the provisions
5 of:

(c)

- 6 (1) K.S.A. 60-253a, and amendments thereto; or
- 7 (2) the national electrical safety code, which would otherwise be
- 8 applicable.

9 Sec. 9. K.S.A. 2001 Supp. 66-1812 is hereby amended to read as
10 follows: 66-1812. Any person to whom this act applies, who violates any
11 of the provisions contained in this act, shall be subject to civil penalties
12 and injunctive relief as set out in K.S.A. 66-1,151, and amendments
13 thereto, *and any remedies established in rules and regulations promul-*
14 *gated by the state corporation commission in support of this act.*

15 Sec. 10. K.S.A. 2001 Supp. 66-1802, 66-1804, 66-1805, 66-1806, 66-
16 1807, 66-1809, 66-1810, 66-1811 and 66-1812 are hereby repealed.

17 Sec. 11. This act shall take effect and be in force from and after its
18 publication in the statute book.

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LEGISLATIVE



TESTIMONY



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SENATE UTILITIES COMMITTEE SB 490

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

My name is Janet Stubbs, Executive Director of the Kansas Building Industry Association. The KBIA is a trade association representing approximately 1700 residential and light commercial construction related companies throughout Kansas. KBIA opposes portions of SB 490.

The KBIA was not permitted to participate in the task force which formulated the legislation presented to the House on this issue during the 2001 Session nor have we been contacted regarding SB 490. However, we have consistently testified on this issue since the issue has been debated in Kansas.

The companies we represent are the companies which do excavations for sewer or water line installations or replacement rather than the road & highway contractors. For over 3 years now I have been receiving complaints from members about the accuracy and timeliness of underground utility companies or their locate subcontractors. In fact, I had a meeting at my office with excavators and locators to attempt to resolve the problem. This has not happened.

On page 3 of SB 490 in Sec. 2 (b), it states that "such notice shall only describe an area in which the proposed excavation reasonably can be completed within the 15 calendar days." Who judges what is "reasonable"? This same "reasonableness" comes into question again in lines 8 through 10, Sec. 2(c)

Excavators are quickly billed by the utility operators for damages to the underground facilities, even though they were operating within marked guidelines. We ask that SB 490 be amended to include language which requires operators to pay excavators for lost time due to inaccurate or untimely marking. We believe that it is only fair that small independent businesses be treated equally with utilities for their business losses due to the negligence of the operator or the operator's contractors.

Our members state that the largest single problem they (the excavators) have is getting reimbursed from the operators for down time due to markings not complete, not completed timely or inaccurate markings.

Mr. Chairman and Members of the Committee, we would greatly appreciate your support of these proposed amendments to SB 490. Thank you for the opportunity to present this view.

Senate Utilities Committee
February 14, 2002
Attachment 8-1