

MINUTES OF THE SENATE UTILITIES COMMITTEE.

The meeting was called to order by Chairperson Senator Stan Clark at 9:30 a.m. on February 25, 2002 in Room 231-N of the Capitol.

All members were present except: Senator Lyon (excused)
Senator Wagle (excused)

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

Conferees appearing before the committee:

Others attending: See attached list

The chair opened for discussion and possible action on:

SB 490- Kansas underground utility damage prevention act, regulations.

Leo Haynos, chief of pipeline safety for the Kansas Corporation Commission, presented the report on the consensus of all conferees on **SB 490** on the amendments to the bill and a copy of the bill with balloon amendments. In addition, to those included he recommended striking of the word "preparation" on page 2, following line 37 in new language defining production petroleum lead line. (Attachment 1)

Committee discussion on rebuttable presumption of negligence, late locate, fines and penalties and the role of KCC.

Moved by Senator Barone, seconded by Senator Emler, approve amendments offered for SB 490. Motion carried.

Moved by Senator Barone, seconded by Senator Emler, SB 490 be passed out favorably as amended. Motion carried.

The next meeting of the Senate Utilities Committee is February 26, 2002.

Adjournment.

Respectfully submitted,

Ann McMorris, Secretary

Attachment - 1

**Kansas Corporation Commission Staff
Discussion of Amendments to SB 490**

**Before the Senate Utilities Committee
February 25, 2002**

Thank you, Mr. Chair and members of the committee. I am Leo Haynos, chief of pipeline safety for the Corporation Commission. Today, I am here to discuss the amendments offered to SB 490.

As you recall, Chairman Clark requested that the KCC staff organize a meeting of all conferees of this bill and work to reach consensus on the amendments offered. KCC staff organized a meeting last Friday, February 22, 2002, which was attended by all of the parties that offered amendments or testimony on SB 490 along with representatives of seven other organizations that are interested in this bill. All told, 19 people attended the meeting, in addition to KCC staff, to discuss and refine the amendments offered to the bill. A list of those in attendance is attached to my testimony. Although some of the amendments were tentative at the time we discussed them, I can say that at least as of Friday's meeting, we had reached consensus. During our discussion, several of the amendments that were previously presented to the committee were either withdrawn by the parties or were revised to reach consensus with the group. In total, we have 11 amendments to offer for SB 490. In my comments today, I would like to discuss our conclusions from our Friday meeting. I have provided a copy of the bill with balloon amendments included.

The first amendment can be found at Page 1, line 37. This simply changes the use of the word platted in order to agree with the definition of "platted land".

The second amendment is offered by KCC staff to update the definition of "marking." Rather than reference an outdated document, the amendment requires the definition to be defined in regulation.

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February 25, 2002
Attachment 1-1

The third and fourth amendments, listed on Page 2, are new definitions. They are offered by the Kansas Independent Oil and Gas Association, (KIOGA), in an effort to clearly define terms that pertain to oil and gas operations and are used in the definition of a “facility”.

The fifth amendment is on Page 3, Lines 25 through 31. This amendment was originally offered by KIOGA to provide clearer instructions on the requirements for whitelining. The amendment was modified slightly by the group that met on Friday.

The sixth amendment is on Page 4, Lines 12 through 14. This language again discusses whitelining in reference to when an operator must respond to a whitelist request. This language was changed slightly to be consistent with amendment 5.

The seventh amendment is on Page 4, Lines 34 through 36. This amendment was offered by the Kansas Trial Lawyers Association, (KTLA), to clarify that paragraph (d) of K.S.A. 66-1806 applies only to liability concerns between excavators and operators. Liability of the excavator to other parties is not addressed in this paragraph.

The eighth amendment is located on Page 4 after Line 37. It is an addition to SB 490, and it includes new paragraphs (e) and (f) in K.S.A. 66-1806. This amendment is in response to the amendments originally offered by Kansas Gas Service. This topic received a considerable amount of discussion on Friday. I should note that the version of the amendment that is presented in the handout is Staff’s rendition based on notes from Friday’s meeting. The intent of paragraph (e) is to exempt the operator from liability for economic damages to an excavator for late locates; provided that the late locates are not the result of gross negligence on the part of the operator. For example, Staff may consider repeated late locates for no valid reason to be grossly negligent. However, late locates because of weather conditions or an unusually high volume of locate requests would not be considered grossly negligent. The amendment would exempt liability because of the two day requirement only,

but would not prevent an operator from being held liable for economic damages in cases such as inaccurate locates. In any event, the Commission would still have the authority to levy civil penalties against an operator for any untimely or inaccurate locates.

The portion of this amendment labeled as paragraph (f) would not allow the Commission to consider the merits of an excavator's complaint about late locates if the excavator waited more than one year from the discovery of the problem before filing a complaint with the Commission. The intent of this paragraph is to prevent the costly and time consuming process of researching documents to determine the merits of a dated incident.

The ninth amendment is located on line 37 of Page 5 of the bill. This amendment, offered by Southwestern Bell, would simply leave the reference to damage of underground facilities as it is in the current statute.

The tenth amendment is found of Page 5 of the bill in lines 40 through 42. This amendment, offered by KTLA, would strike paragraph (b) of current statute K.S.A. 66-1811. The original paragraph would not allow a rebuttable presumption of negligence to be used against an operator that fails to list his facilities with the One Call center. By striking this paragraph, a rebuttable presumption of negligence could be used against any violator of the act.

Lastly, the eleventh amendment is found on Page 6, Lines 17 and 18. This amendment would make the effective date of the proposed changes January 1, 2003. This would allow the changes in the act to occur outside of the busy summer excavating season.

This concludes my testimony for today. I will now answer any questions that you may have.

Senate Bill 490
Conferee Meeting
February 22, 2002

<u>Name</u>	<u>Company</u>	<u>Phone #</u>
Leo Haynos	KCC	785-217-3278
Daivd McDermott	Qwest	785-565-3967
Jim Irons	S.W.Bell	316-261-0249
George R. Melling	KS Gas Service	913-319-8677
Jim Bartling	Greeley	913-764-05331 x 225
Tom Shimon	Kansas One Call, Inc.	316-687-0494
James G. Flaherty	Anderson, Byrd, Richeson & Flaherty	785-242-1234
Ken Peterson	KS Petroleum Council	785-234-0589
Larry Cowger	KS Gas Service	785-431-4025
David Backer	S.W.Bell	913-432-1826
Marty Bregman	Western Resources	785-572-1986
Ron Gaches	Williams	785-233-4512
Barb Conart	KTLA	785-232-7756
Jon Miles	KEC	785-478-4554
Steve Johnson	KS Gas Service	913-319-8604
Janet Stubbs	KS Bldg. Ind. Assn.	785-267-2936
Robert E. Krehbiel	KS Ind. Oil & Gas	316-263-7297
Jack Glaves	Kinder-Morgan	
Dick Brewster	BP America	
Dave Cruz	BP America	
John Paresi	KTLA	
Susan Cunningham	KCC	

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9. AN ACT amending the Kansas underground utility damage prevention
10. act; concerning certain regulations thereof; amending K.S.A. 2001
11. Supp. 66-1802, 66-1804, 66-1805, 66-1806, 66-1807, 66-1809, 66-
12. 1810, 66-1811 and 66-1812 and repealing the existing sections.
13.
14. Be it enacted by the Legislature of the State of Kansas:
15. Section 1. K.S.A. 2001 Supp. 66-1802 is hereby amended to read as
16. follows: 66-1802. As used in this act:
17. (a) "Damage" means any impact or contact with an underground fa-
18. cility, its appurtenances or its protective coating, or any weakening of the
19. support for the facility or protective housing which requires repair.
20. (b) "Emergency" means any condition constituting a clear and pres-
21. ent danger to life, health or property, or a customer service outage.
22. (c) "Excavation" means any operation in which earth, rock or other
23. material below the surface is moved or otherwise displaced by any means,
24. except tilling the soil/or normal agricultural purposes, or railroad or road
25. and ditch maintenance that does not change the existing railroad grade,
26. road grade and/or ditch flowline, or operations related to exploration and
27. production of crude oil or natural gas, or both.
28. (d) "Excavator" means any person who engages directly in excavation
29. activities within the state of Kansas, but shall not include any occupant
30. of a dwelling who: (1) Uses such dwelling as a primary residence; and (2)
31. excavates on the premises of such dwelling.
32. (e) "Facility" means any underground line, system or structure used
33. for gathering, storing, conveying, transmitting or distributing gas, elec-
34. tricity, communication, crude oil, refined or processed petroleum, petro-
35. leum products or hazardous liquids; facility shall not include, any pro-
36. duction petroleum lead lines, salt water disposal lines or injection lines,
37. which are located on unplatted land or outside 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 such
41. as as-built construction drawings, system maps, probes, locator devices
42. or any other type of proven technology for locating.
43. (g) "Marking" means the use of stakes, paint, flags or other clearly

37. which are not located on unplatted platted land or outside
inside the corporate limits of any
38. city.

- 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. 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- rules and regulations promulgated by the state~~
corporation commission in the administration and enforcement of this
act.

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

"Platted Land" means a tract or parcel of land which has been subdivided into lots of less than 5 acres for the purpose of building developments, including housing developments, and for which a surveyor's plat has been filed of record in the office of the register of deeds in the county where the land is located.

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

~~(n)~~ (g) "Working day" means every day, except Saturday, Sunday or a legally proclaimed local, state or federal holiday Monday through Friday

5. beginning at 12:01 a.m., except for the following officially recognized holidays: New Year's day, Memorial day, Independence day, Labor day,

6. Thanksgiving day, the day after Thanksgiving and Christmas.

7. Sec. 2. K.S.A. 2001 Supp. 66-1804 is hereby amended to read as follows: 66-1804. (a) Except in the case of an emergency, an excavator

9. shall serve notice of intent of excavation at least two full working days, but not more than ~~10 working~~ 15 calendar days before commencing the

10. excavation activity the scheduled excavation start date, on each operator having underground facilities located in the proposed area of excavation.

11. (b) The notice of intent to excavate or any subsequent updates shall be valid for 15 calendar days after the excavation start date and such

12. notice shall only describe an area in which the proposed excavation reasonably can be completed within the 15 calendar days.

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

14. person.

15. ~~(b)~~ (d) The notice of intent of excavation shall contain the name, address and telephone number of the person filing the notice of intent,

16. the name of the excavator, the date the excavation activity is to commence and the type of excavation being planned. The notice shall also contain

17. the specific location of the excavation if it is to take place within the boundaries of a city or the specific quarter sections if outside the boundaries of any city.

18. (e) The person filing the notice of intent to excavate shall whieline the proposed excavation site when the description of the excavation location cannot be described with sufficient detail to enable the operator to ascertain the precise tract or parcel involved.

19. ~~(e)~~ (f) The provisions of this section shall not apply to a preengineered project or a permitted project, except that the excavators shall be required

20. to give notification in accordance with this section prior to starting such project.

21. Sec. 3. K.S.A. 2001 Supp. 66-1805 is hereby amended to read as follows: 66-1805. (a) This act recognizes the value of and encourages and

22. authorizes the establishment of a single notification center for the state of Kansas. The notification center shall provide prompt notice to each

23. affected member of any proposed excavation. Each operator who has an underground facility shall become a member of the notification center.

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

25. the specific location of the excavation, ~~if it is to take place within the boundaries of a city or the specific quarter sections if outside the boundaries of any city-~~

26. (e) The person filing the notice of intent to excavate shall, at the request of the operator, whieline

27. the proposed excavation site when the ~~description of the excavation location cannot be described with sufficient detail to enable the operator to ascertain the precise tract or parcel involved-~~ location of the proposed excavation.

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amendments thereto, to operators shall be given by notifying the notification center by telephone at the toll free number or by other communication methods approved by the notification center. The content of such notification shall be as required by K.S.A. 2001 Supp. 66-1804, and amendments thereto.

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

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

12. Sec. 4. K.S.A. 2001 Supp. 66-1806 is hereby amended to read as follows: 66-1806. (a) Within two working days, beginning on the first working day after the excavator has filed notice of intent to excavate, an operator served with notice shall, in advance of the proposed excavation, unless otherwise agreed between the parties, shall inform the excavator of the tolerance zone of the underground facilities of the operator in the area of the planned excavation by marking, flagging or other acceptable 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 proposed excavation, such operator, before the excavation start date, shall notify the excavator that it has no facilities in the area of proposed excavation by telephone, facsimile, marking the area all clear or by other technology that may be developed for such purposes.

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

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

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

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

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12. Sec. 4. K.S.A. 2001 Supp. 66-1806 is hereby amended to read as follows: 66-1806. (a) Within two working days, beginning on the latter of the first

14. working day after the excavator has filed notice of intent to excavate or and the first day after the excavator has whitelined the excavation site, if requested by the operator pursuant to Section 2(e), an

34. proceed and shall not be liable to the operator 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 to the operator in those

(e). For economic damages in any civil court of this state, 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 cause of action on the part of the excavator against an operator, except that nothing in this act shall be construed to hold any operator harmless from liability in those cases of inaccurate marking of the tolerance zone, gross negligence, or willful and wanton conduct. Such failure may subject an operator to civil penalties as determined by the state corporation commission.

(f). Any person claiming that an operator has failed to inform the excavator within two working days of the tolerance zone of the underground facilities of the operator shall file a complaint with the state corporation commission requesting enforcement of subsection (a) within one year of becoming aware of the violation.

38. (g) (e)

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of public utility service, excavation, maintenance or repairs may be made 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 emergency condition, such operator shall make a reasonable effort to identify

6. the location of its facility within two hours of receiving notification or

7. before excavation is scheduled to begin, whichever is later.

8. (c) Any person providing a misrepresentation of an emergency excavation may be subject to the penalties set out in K.S.A. 2001 Supp. 66-

9. 1812, and amendments thereto.

10. Sec. 6. K.S.A. 2001 Supp. 66-1809 is hereby amended to read as

11. follows: 66-1809. (a) Upon receiving information as provided in K.S.A.

12. 2001 Supp. 68-1806, and amendments thereto, an excavator shall exercise

13. such reasonable care as may be necessary for the protection of any underground facility in and near the construction area when working in close

14. proximity to any such underground facility.

15. (b) An excavator using a trenchless excavation technique shall meet

16. minimum operating guidelines as prescribed in rules and regulations developed and adopted by the state corporation commission in support of

17. this act.

18. Sec. 7. K.S.A. 2001 Supp. 66-1810 is hereby amended to read as

19. follows: 66-1810. When any contact with or damage to any underground

20. facility occurs, the operator shall be informed immediately by the excavator. Upon receiving such notice, the operator immediately shall dispatch

21. personnel to the location to provide necessary temporary or permanent repair of the damage. If the protective covering of an electrical

22. line is penetrated or dangerous gases or fluids are escaping from a broken

23. line, the excavator immediately shall inform emergency personnel of the

24. municipality in which such electrical short or broken line is located and

25. take any other action as may be reasonably necessary to protect persons and property and to minimize hazards until arrival of the operator's personnel or emergency first responders.

26. Sec. 8. K.S.A. 2001 Supp. 66-1811 is hereby amended to read as

27. follows: 66-1811. (a) In a civil action in a court of this state when it is

28. shown by competent evidence that personal injury, death or other damages, including damage to any underground facilities, occurred as a result

29. of a violation of this act, there shall be a rebuttable presumption of negligence on the part of the violator.

30. (b) The provisions of subsection (a) shall not apply if the operator

31. whose underground facilities are damaged fails to participate in the notification center.

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

37. ages, including damage to any underground facilities, occurred as a result

40. ~~(b) The provisions of subsection (a) shall not apply if the operator~~

41. ~~whose underground facilities are damaged fails to participate in the notification center.~~

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

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

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

6. (1) K.S.A. 60-258a, 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.

17. Sec. 11. This act shall take effect and be in force ~~from and~~ after its

18. publication in the statute book and after January 1, 2003.