

MINUTES OF THE HOUSE UTILITIES COMMITTEE

The meeting was called to order by Chairman Carl Holmes at 9:00 A.M. on March 2, 2006 in Room 231-N of the Capitol.

All members were present.

Committee staff present:

Mary Galligan, Kansas Legislative Research
Dennis Hodgins, Kansas Legislative Research
Mary Torrence, Revisor's Office
Heather Klaasen, Legislative Research Intern
Rena Hansen, Committee Secretary

Conferees appearing before the committee:

Leo Haynos, KCC
Bob Totten, Kansas Contractors Association
Ed Desoignie, Heavy Constructors of Kansas City
Elmer Ronnebaum, Kansas Rural Water

Others attending:

See attached list.

Mary Galligan, Kansas Legislative Research, gave a briefing to the committee on **SB 464**. Additionally, she had a copy of the bill with remarks inserted (Attachment 1) explaining the changes in the current law for the utility damage prevention act.

Hearing on:

SB 464 **Kansas underground utility damage prevention act, rules and regulations.**

Proponents:

Leo Haynes, KCC, (Attachment 2), explained the bill and the procedure of digging and excavating. He also offered an explanation of how the current one call program. Additionally, he walked the committee through the history of the one call laws that have occurred.

Bob Totten, Kansas Contractors Association, (Attachment 3), presented testimony in favor of **SB 464** and supported the added wording of the Senate where water utilities were also including making the one call a true "one call".

Written Proponent:

Edward DeSoignie, The Heavy Constructors Association, (Attachment 4), in support of **SB 464** as amended to include water and sewer facilities along with certain oil and gas production facilities.

Opponents:

Elmer Ronnebaum, Kansas Rural Water Association, (Attachment 5), spoke in opposition to **SB 464** as it pertains to rural water lines and the need to remove the amendment added by the Senate.

Questions were asked and comments were made by Representatives: Jason Watkins, Robert Olson, Lynne Oharah, Tom Sloan, and Carl Krehbiel.

Hearing on **SB 464** closed.

CONTINUATION SHEET

MINUTES OF THE House Utilities Committee at 9:00 A.M. on March 2, 2006 in Room 231-N of the Capitol.

Tomorrow we will hear **SB 463**.

Representative Robert Olsen moved to accept the minutes for January 10, 11,12,18,19,20 24 and February 7,8,9 presented. Seconded by Representative Peggy Mast. Motion carried unanimously.

The next meeting is scheduled for March 3, 2006.

Meeting Adjourned.

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: March 2, 2006

NAME	REPRESENTING
Don Low	KLL
Leo Wiggins	KCC
Mark Tomc	"
TOMDAY	KCC
Steve Johnson	Kansas Gas Service
Andrew Couch	Federico Consulting
Mark Schreiber	Westar Energy
Tim Englebert	at
Pat Lehman	KRWIA
ELMER RONNEBAUM	K's RWRAC WATER ASSOC.
LON STANTON	NORTHERN NATURAL GAS Co
ROGER RANDALL	KCPZ
PHIL WAGES	KCPLO
Kimberly (Shew)	Aquila
JOHN C. BOTTENBERG	ATT/WESTAR
Mark Tomc	LKM
Tom Caches	CBBA
Bob Totten	K.C.A
DANE HOLTBAUMS	KEC
HARRY BERG	MIDWEST ENERGY

[As Amended by Senate Committee of the Whole]

As Amended by Senate Committee

Session of 2006

SENATE BILL No. 464

By Committee on Utilities

1-26

12 AN ACT concerning the Kansas underground utility damage prevention
13 act; providing for rules and regulations; ~~amending K.S.A. 66-1802~~
14 ~~and repealing the existing section.~~

15
16 *Be it enacted by the Legislature of the State of Kansas:*

17 Section 1. (a) The state corporation commission shall have full power
18 and authority to adopt all necessary rules and regulations for carrying out
19 the provisions of K.S.A. 66-1801 through 66-1814, and amendments
20 thereto.

21 (b) This section shall be part of and supplemental to the Kansas un-
22 derground utility damage prevention act.

23 ~~Sec. 2. K.S.A. 66-1802 is hereby amended to read as follows:~~
24 ~~66-1802. As used in this act:~~

25 ~~—(a) “Damage” means any impact or contact with an under-~~
26 ~~ground facility, its appurtenances or its protective coating, or any~~
27 ~~weakening of the support for the facility or protective housing~~
28 ~~which requires repair.~~

29 ~~—(b) “Emergency” means any condition constituting a clear and~~
30 ~~present danger to life, health or property, or a customer service~~
31 ~~outage.~~

32 ~~—(c) “Excavation” means any operation in which earth, rock or~~
33 ~~other material below the surface is moved or otherwise displaced~~
34 ~~by any means, except tilling the soil for normal agricultural pur-~~
35 ~~poses, or railroad or road and ditch maintenance that does not~~
36 ~~change the existing railroad grade, road grade and/or ditch flowline,~~
37 ~~or operations related to exploration and production of crude oil or~~
38 ~~natural gas, or both.~~

39 ~~—(d) “Excavator” means any person who engages directly in ex-~~
40 ~~cavation activities within the state of Kansas, but shall not include~~
41 ~~any occupant of a dwelling who: (1) Uses such dwelling as a primary~~
42 ~~residence; and (2) excavates on the premises of such dwelling.~~

43 ~~—(e) “Facility” means any underground line, system or structure~~

The bill would authorize the KCC to adopt rules and regulations to implement the Kansas Underground Utility Damage Prevention Act. The bill would take effect on July 1, 2006. The fiscal note states that the bill would have no fiscal impact. The bill passed the Senate 39-0.

HOUSE UTILITIES

DATE: 3/2/06

ATTACHMENT 1

The 2002 bill also amended one of the statutes of the act to provide rule and regulation authority regarding trenchless excavation.

"Sec. 6. K.S.A. 2001 Supp. 66-1809 is hereby amended to read as follows: 66-1809.(a) Upon receiving information as provided in K.S.A. 2001 Supp. 68-1806, and amendments thereto, an excavator shall exercise such reasonable care as may be necessary for the protection of any underground facility in and near the construction area when working in close proximity to any such underground facility. (b) An excavator using a trenchless excavation technique shall meet minimum operating guidelines as prescribed in rules and regulations developed and adopted by the state corporation commission in support of this act."

1 ~~used for gathering, storing, conveying, transmitting or distributing~~
 2 ~~water, gas, electricity, communication, crude oil, refined or proc-~~
 3 ~~essed petroleum, petroleum products or hazardous liquids; facility~~
 4 ~~shall not include, any production petroleum lead lines, salt water~~
 5 ~~disposal lines or injection lines, which are not located on platted~~
 6 ~~land or inside the corporate limits of any city.~~
 7 ~~—(f) “Locatable facility” means facilities for which the tolerance~~
 8 ~~zone can be determined by the operator using generally accepted~~
 9 ~~practices such as as-built construction drawings, system maps,~~
 10 ~~probes, locator devices or any other type of proven technology for~~
 11 ~~locating.~~
 12 ~~—(g) “Marking” means the use of stakes, paint, flags or other~~
 13 ~~clearly identifiable materials to show the field location of under-~~
 14 ~~ground facilities, in accordance with the rules and regulations~~
 15 ~~promulgated by the state corporation commission in the adminis-~~
 16 ~~tration and enforcement of this act.~~
 17 ~~—(h) “Municipality” means any city, county, municipal corpo-~~
 18 ~~ration, public district or public authority located in whole or in~~
 19 ~~part within this state which provides firefighting, law enforcement,~~
 20 ~~ambulance, emergency medical or other emergency services.~~
 21 ~~—(i) “Notification center” means the statewide communication~~
 22 ~~system operated by an organization which has as one of its purposes~~
 23 ~~to receive and record notification of planned excavation in the state~~
 24 ~~from excavators and to disseminate such notification of planned ex-~~
 25 ~~avacation to operators who are members and participants.~~
 26 ~~—(j) “Operator” means any person who owns or operates an un-~~
 27 ~~derground facility, except for any person who is the owner of real~~
 28 ~~property wherein is located underground facilities for the purpose~~
 29 ~~of furnishing services or materials only to such person or occupants~~
 30 ~~of such property.~~
 31 ~~—(k) “Preengineered project” means a public project or a project~~
 32 ~~which is approved by a public agency wherein the public agency~~
 33 ~~responsible for the project, as part of its engineering and contract~~
 34 ~~procedures, holds a meeting prior to the commencement of any con-~~
 35 ~~struction work on such project in which all persons, determined by~~
 36 ~~the public agency to have underground facilities located within the~~
 37 ~~construction area of the project, are invited to attend and given an~~
 38 ~~opportunity to verify or inform the public agency of the location of~~
 39 ~~their underground facilities, if any, within the construction area~~
 40 ~~and where the location of all known and underground facilities are~~
 41 ~~duly located or noted on the engineering drawing as specifications~~
 42 ~~for the project.~~
 43 ~~—(l) “Permitted project” means a project where a permit for the~~

The Senate Utilities Committee amended the bill to include water in the definition of "facility" under the act. The Senate Committee of the Whole Amendment returned the bill to its introduced form.

A 2002 amendment to the act added rule and regulation authority to the definition of "marking."

1 ~~work to be performed must be issued by a city, county, state or~~
2 ~~federal agency and, as a prerequisite to receiving such permit, the~~
3 ~~applicant must locate all underground facilities in the area of the~~
4 ~~work and in the vicinity of the excavation and notify each owner of~~
5 ~~such underground facilities.~~
6 ~~—(m) “Person” means any individual, partnership, corporation,~~
7 ~~association, franchise holder, state, city, county or any govern-~~
8 ~~mental subdivision or instrumentality of a state and its employees,~~
9 ~~agents or legal representatives.~~
10 ~~—(n) “Production petroleum lead line” means an underground fa-~~
11 ~~cility used for production, gathering or processing on the lease or~~
12 ~~unit, or for delivery of hydrocarbon gas and/or liquids to an asso-~~
13 ~~ciated tank battery, separator or sales facility. Production petro-~~
14 ~~leum lead lines shall include underground lines associated with~~
15 ~~lease fuel and saltwater disposal and injection.~~
16 ~~—(o) “Platted land” means a tract or parcel of land which has~~
17 ~~been subdivided into lots of less than five acres for the purpose of~~
18 ~~building developments, including housing developments, and for~~
19 ~~which a surveyor’s plat has been filed of record in the office of the~~
20 ~~register of deeds in the county where the land is located.~~
21 ~~—(p) “Tolerance zone” means the area within 24 inches of the~~
22 ~~outside dimensions in all horizontal directions of an underground~~
23 ~~facility.~~
24 ~~—(q) “Update” means an additional request from the excavator~~
25 ~~to extend the time period of the request for intent to excavate be-~~
26 ~~yond the 15 calendar day duration of the request.~~
27 ~~—(r) “Whitelineing” means the act of marking by the excavator the~~
28 ~~route or boundary of the proposed excavation site with white paint,~~
29 ~~white stakes or white flags.~~
30 ~~—(s) “Working day” means every day Monday through Friday~~
31 ~~beginning at 12:01 a.m., except for the following officially recog-~~
32 ~~nized holidays: New Year’s day, Memorial day, Independence day,~~
33 ~~Labor day, Thanksgiving day, the day after Thanksgiving and~~
34 ~~Christmas.~~
35 ~~—Sec. 3. K.S.A. 66-1802 is hereby repealed.~~
36 Sec. 2-4 [2]. This act shall take effect and be in force from and after
37 its publication in the statute book.

1-3

KANSAS

CORPORATION COMMISSION

KATHLEEN SEBELIUS, GOVERNOR

BRIAN J. MOLINE, CHAIR

ROBERT E. KREHBIEL, COMMISSIONER

MICHAEL C. MOFFET, COMMISSIONER

Before the House of Representatives Utilities Committee

Comments by the

Staff of the Kansas Corporation Commission

March 2, 2006

Senate Bill 464

Thank you Mr. Chair and members of the Committee. I am appearing today on behalf of the KCC Staff in support of SB 464 which gives authority to the Commission to promulgate regulations that will support the Kansas Underground Utility Damage Prevention Act, also known by the acronym KUUDPA or the One Call law. Under this Act, the KCC is the state agency that is required to administer and enforce the provisions of the law and we believe the ability to promulgate regulations will help us fulfill this obligation.

Before I begin discussing the bill, I would like to give a brief overview of the Act and some of its history. In Kansas, if you don't count water and sewer facilities, there are roughly 160,000 miles of utility lines that are buried. Underground utilities include pipelines, gas distribution lines, almost all phone lines, cable TV and fiber optic communication lines as well as electric service lines. In fact, most new housing developments place all of the utilities underground. Under KUUDPA, there are two groups that are affected by the law's requirements. They are 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

HOUSE UTILITIES

DATE:

3/2/06

the area where he will be working. To find out what is underground he places a call to a call center that notifies all operators of buried facilities at his work site. This practice is what gives KUUDPA its nickname of the "One Call law". That is, the excavator theoretically only has to make one call to find out the location of all utilities. 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 utility 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. All of the steps I have listed are requirements under KUUDPA. In theory, this is a simple concept; however, as requests for locates increase and the underground becomes more congested, the communication link between excavators and operators begins to unravel. In 2005, the call center received 465,000 calls from excavators informing them of proposed excavation sites. Each call by an excavator generally produces 5 locate requests being sent to facility operators since there is usually more than one type of facility in the ground at any given place. In some cities, as many as 9 operators must respond for every request by an excavator. Last year, the call center informed utility operators 2.4 million times that an excavator was planning to dig near their facilities and that he needed locates. The locating service is free for the excavator. The utility operator pays \$1.14 to the call center for each locate request and it generally costs \$15 to perform the actual locate. Based on these general costs, the utility members of Kansas One Call spent approximately \$39 million providing locates last year.

Although the system works pretty well considering the volume of use, Kansas utilities still suffer approximately 4 million dollars of damage each year. 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. In fact, pipeline damage by excavators is the leading cause of natural gas explosions in the United States. But water contamination is also a potential risk as is phone line damage, particularly for 911 communications.

I mentioned earlier there are over 160,000 miles of underground utilities if you do not count water and sewer facilities. Under KUUDPA, water and sewer facilities along with certain oil and gas production facilities are not considered to be underground utilities. Therefore, they have no requirement to join the Call Center or to provide locates. As you may be aware, SB 464 was amended in the senate utilities committee to change the definition of facilities in the statute to include operators of water utilities. This amendment was removed from the bill on the Senate floor and the bill is now in its original form. I think it is important to note that 264 water/sewer facility operators have voluntarily joined Kansas One Call in order to protect their infrastructure. On the other hand, I also note that 250 rural water districts and 570 municipalities are not members of One Call. This fact can be problematic for the excavator if for no other reason than he can not just make one call to notify all utilities when he will be digging in a certain area. KCC Staff believes the facility exemptions contained in KUUDPA should be reviewed and perhaps changed. However, we believe simply taking away the exemption for water may cause more problems than it solves. The two most significant problems are:

1. Most water utilities are operated by municipalities and the cost of providing locates can be a substantial drain on their operating budgets; and

2. Water facilities are typically very difficult to locate within the 24 inch tolerance zone required by KUUDPA.

Both of these problems can be resolved and other states have addressed them by modifying their one call laws to allow 3 years for municipalities to meet the requirements or by increasing the tolerance zone for facilities that are difficult to locate. As I mentioned earlier, KCC Staff believes the issue of facility exemptions should be examined and perhaps changed. However, we think it would be more appropriate to deal with these exemptions in a stand alone bill. Rather than place an amendment in SB 464, I propose that KCC Staff work with the affected parties over the next few months and present a bill addressing the exemptions for your consideration in the 2007 session.

During the 2002 legislative session, the Commission Staff asked for the introduction of Senate Bill 490 which led to several minor revisions of KUUDPA. In my testimony before this committee at that time, I explained that it was our intent to prepare regulations to supplement the statute and provide specific instructions for day to day operations under the Act. In fact, the statutes were amended by SB 490 to allow the KCC to promulgate regulations dealing with marking utilities and requiring guidelines for trenchless excavations. Beginning in 2003, Staff worked with a group of utility operators and excavators to draft regulations and in late 2004 we began the approval process. The Department of Administration completed their review and modification of the submitted language in the summer of 2005, and the proposed regulations were sent to the office of the Attorney General for review as the next step of the process. In October of last year, the office of the attorney general stated the existing statute limits the KCC authority to promulgate regulations only to the two areas specifically stated in the Act.

Subsequently, the office of the attorney general ruled they could not approve a regulation without a statute that clearly authorizes adoption of the regulation.

Today, we are supporting SB 464 because we believe KUUDPA regulations will be a valuable tool in providing clear direction to the regulated community. For example, the proposed regulations, in addition to providing the requirements for marking and trenchless excavation guidelines, also define several terms used in the statute but not defined. As an example, K.S.A. 66-1806 contains the phrase, "unless otherwise agreed between the parties", when discussing the requirements for an operator to provide locates. This phrase provides needed flexibility by allowing the operator and the excavator to reach an agreement, typically through a meeting at the excavation site, that makes the most efficient use of their manpower. Unfortunately, the statute does not require documentation of this meeting and occasionally a misunderstanding at the informal site meeting has led to tragic accidents. One of the regulations we are proposing would establish the requirement to document what is agreed upon between the parties in an effort to minimize miscommunications. The proposed regulations also provide clear instruction regarding what needs to be included in the excavator's notice of intent to excavate as well as including requirements for the utility operator to provide data to the KCC on the number and type of damages suffered each year. The underground utilities industry is constantly evolving to include new techniques for repairing existing infrastructure or placing new facilities in service. Within the last 10 years, techniques such as vacuum excavation, trenchless excavation, and pipe bursting have developed into accepted and popular excavation techniques. As I stated earlier, the purpose of KUUDPA is to ensure appropriate communication between excavators and utility operators. Clarifying the authority of the Commission to promulgate regulations gives us the ability to

modify and clarify the law's requirements within the constraints of the statute as the industry evolves. We believe this bill will allow the Commission to deliver more effective administration of the One Call law.

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

THE KANSAS CONTRACTORS ASSOCIATION, INC.



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Testimony

By the Kansas Contractors Association before the House Utilities

Committee regarding Kansas Underground Utility Prevention Act—SB 464

March 2, 2006

Mr. Chairman and members of the House Utilities Committee, I am Bob Totten, Public Affairs Director for the Kansas Contractors Association. Our organization represents over 350 companies who are involved in the construction of highways and water treatment facilities in Kansas and the Midwest.

Today, I am in support of the proposed legislation however I want to seek an amendment to the bill which was suggested in the Senate Committee several weeks ago. In the bill which you see before you, the word "water" was included by Senator Pat Apple. We were quite pleased to see the addition of "water" added to the legislation and would hope you would consider this today for this measure.

When I testified on this bill in the early 90's our organization had hoped all utilities would be part of the legislation. They were excluded for whatever reason and their exclusion has caused our members more time and effort than should be

HOUSE UTILITIES

DATE:

3/2/06

ATTACHMENT

3

necessary.

The one call legislation should be what it is one call. Not two calls. Right now that is what our contractors face...one call to the Call Before You Dig program and then several other calls to the water utilities the contractor may think is located in the area.

Disrupting a water line is usually not life threatening but the larger ones can be very destructive. We find that hitting any utilities not located correctly is a safety issue and we believe the One Call Program should be all inclusive.

I urge you on behalf of the contractors to amend this legislation to the way the Senate committee suggested. I stand for your questions.



The Heavy Constructors Association

of The Greater Kansas City Area

TESTIMONY OF EDWARD DeSOIGNIE
BEFORE THE HOUSE UTILITIES COMMITTEE
ON SENATE BILL 464
March 2, 2006

Thank you Mr. Chairman. My name is Edward DeSoignie. I am the Executive Director of the Heavy Constructors Association of the Greater Kansas City Area. The Heavy Constructors represent over 150 companies in the heavy, highway and utility construction industry in the Greater Kansas City Area which includes both Kansas and Missouri.

We thank you for the opportunity to come before you today to speak on an important issue with Senate Bill 464.

Under present law water and sewer facilities along with certain oil and gas production facilities are not considered to be underground utilities and are not required to join One Call to provide locates. By not requiring water and sewer facilities to participate in One Call, the public comes out the loser. Under our present system, a contractor better know which water and sewer facilities to contact in an area outside of the One Call system. If they don't, it is the homeowner or business who is inconvenienced by a loss of service.

We request that you amend Senate Bill 464 to require operators of water and sewer utilities to participate in One Call and report the bill favorably as amended.

This concludes my testimony. I would be glad to answer any questions.

HOUSE UTILITIES

DATE: 3/2/06

ATTACHMENT 4





P.O. Box 226 • Seneca, KS 66538 • 785/336-3760
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**Comments on SB 464
Before the House Utilities Committee
March 2, 2006**

Mr. Chairman and Members of the Committee:

My name is Elmer Ronnebaum. I am General Manager of the Kansas Rural Water Association. The Association has membership of nearly 295 rural water districts in Kansas and 465 cities. The Association appreciates the opportunity to comment on SB 464.

Kansas Rural Water supported the removal of the amendment that had been added in the Senate to include "water" in SB 464. The Association respectfully requests that consideration be given for the unique problems such a requirement would have on most cities and rural water districts.

While many cities and rural water districts are members of One Call, Kansas Rural Water Association suggests that membership be voluntary. Many small communities have one person on staff, or even someone who is working part-time or volunteer. The time involved in identifying all the locate notices that are generated can require a significant percentage of staff time. While the process is improved, many systems complain that they receive requests for locates that are not even close to where the system's pipelines are located, as across the section or across the road. There are problems with directions and so it becomes necessary for the utility to check each locate request for proper location. One southeastern Kansas water system reported yesterday that they have a lot of oil and gas production going on so there are many line locate requests.

Kansas Rural Water Association has tried to be of assistance to water and wastewater utilities to improve their mapping technology. The Association has also suggested that funding agencies require improved mapping technology to be used, namely GIS or tracer wire, as part of their design review process. Most cities and rural water districts have difficulty locating their water or wastewater utilities based on the conventional 'as-built' maps, 40 years ago or 4 years ago. More modern technologies should be utilized for future locates.

Respectfully submitted,


Elmer Ronnebaum
General Manager

HOUSE UTILITIES

DATE: 3/2/06
ATTACHMENT 5