

MINUTES OF THE SENATE UTILITIES COMMITTEE

The meeting was called to order by Chairman Jay Emler at 9:30 A.M. on March 9, 2007 in Room 526-S of the Capitol.

Committee members absent:

Committee staff present: Raney Gilliland, Kansas Legislative Research Department
Mike Corrigan, Revisor of Statutes
Tatiana Lin, Legislative Fellow
Ann McMorris, Committee Secretary

Conferees appearing before the committee:

Others in attendance: See attached list

Chairman Emler opened for discussion and possible action on:

SB 20 - Kansas Underground Utility Damage Prevention Act

The subcommittee on **SB 20** had met twice and directed the Revisor to prepare a proposed **Substitute for Senate Bill 20** incorporating all the suggested changes. (Attachment 1)

Chair called on Revisor's staff member Mike Corrigan to explain the various changes incorporated into **Substitute for SB 20**. In the language on page 4, first underlined portion, it was changed to read, "except that *a larger* the tolerance zone for a tier 2 facility *may* ~~shall~~ be established....." And on page 6 in section (h) following the word 'facilities' *that desire direct contact with the excavator* be inserted and the language would read (h) A suitable record shall be maintained by operators of tier 2 facilities that desire direct contact with the excavator to document the receipt of notices from excavators.

Moved by Senator Francisco, seconded by Senator Reitz, adopt the amendments in **Substitute for SB 20**. Motion carried.

Moved by Senator Francisco, seconded by Senator Reitz, **Substitute for SB 20** be further amended by adding into Section 3 a new (d) as follows: (d) For operators of tier 2 facilities that desire direct contact with the excavator and (1) maintain an in-house utility locate department, (2) provide utility location service 24 hours per day, 7 days per week in response to emergency locate requests, (3) maintain written procedures for the location of underground facilities consistent with K.S.A. 66-1802 and make contact information for the facility locate department readily available to excavators, the notification center will create a special membership for the notification center to provide electronic contact information for the operator and a link to the operator's locate department on the notification center's website. The fee for such special membership will not exceed \$2,500. (The following sections to be renumbered accordingly).

Considerable discussion. Reference to K.S.A. 66-1802 was changed to 66-1806 and added the word "annual" before the word "fee" in the last sentence. Chair called for a vote. Motion failed.

Moved by Senator Reitz, seconded by Senator Petersen, **Substitute for SB 20** be moved out favorably as amended. Motion carried.

Approval of Minutes

Moved by Senator Taddiken, seconded by Senator Reitz, to approve the minutes of the meetings of the Senate Utilities Committee held on March 5, 2007, March 6, 2007, March 7, 2007 and March 8, 2007. Motion carried.

Adjournment.

Respectfully submitted,

Ann McMorris, Secretary

Attachments - 1

PROPOSED Substitute for SENATE BILL NO. 20

By Special Committee on Utilities

AN ACT concerning the Kansas underground utility damage prevention act; amending K.S.A. 66-1802, 66-1804, 66-1805 and 66-1806 and repealing the existing sections.

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

Section 1. On July 1, 2008, K.S.A. 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 sanitary sewer or underground line, system or structure used for transporting, gathering, storing, conveying, transmitting or distributing potable water, gas, electricity, communication, crude oil, refined or processed petroleum, petroleum products or hazardous liquids; facility shall not include, any stormwater sewers or production petroleum lead lines, salt water disposal lines or injection lines, which are not located on platted land or inside 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 identifiable materials to show the field location of underground facilities, in accordance with the rules and regulations promulgated by the state corporation commission in the administration and enforcement of this act.

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

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

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

(k) "Preengineered project" means a public project or a project which is approved by a public agency wherein the public agency responsible for the project, as part of its engineering and contract procedures, holds a meeting prior to the commencement of any construction work on such project in which all persons, determined by the public agency to have underground facilities located within the construction area of the project, are invited to attend and given an opportunity to verify or inform the public agency of the location of their underground

facilities, if any, within the construction area and where the location of all known and underground facilities are duly located or noted on the engineering drawing as specifications for the project.

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

(m) "Person" means any individual, partnership, corporation, association, franchise holder, state, city, county or any governmental subdivision or instrumentality of a state and its employees, agents or legal representatives.

(n) "Production petroleum lead line" means an underground facility used for production, gathering or processing on the lease or unit, or 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.

(o) "Platted land" means a tract or parcel of land which has been subdivided into lots of less than five 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.

(p) "Tier 1 facility" means an underground facility used for transporting, gathering, storing, conveying, transmitting or distributing gas, electricity, communications, crude oil, refined or reprocessed petroleum, petroleum products or hazardous liquids.

(q) "Tier 2 facility" means an underground facility used for transporting, gathering, storing, conveying, transmitting or distributing potable water or sanitary sewage.

~~(p)~~ (r) "Tolerance zone" means the area within not less than 24 inches of the outside dimensions in all horizontal directions

of an underground facility, ^{A LARGER} ~~except that the tolerance zone for a~~
tier 2 facility ^{MAY} shall be established by rules and regulations
adopted under K.S.A. 2006 Supp. 66-1815, and amendments thereto.

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

{r} (t) "Whitelining" means the act of marking by the excavator the route or boundary of the proposed excavation site with white paint, white stakes or white flags.

{s} (u) "Working day" means every day Monday through Friday beginning at 12:01 a.m., except for the following officially recognized holidays: New Year's day, Memorial day, Independence day, Labor day, Thanksgiving day, the day after Thanksgiving and Christmas.

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

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

{b} (c) The notice of intent to excavate or any subsequent updates shall be valid for 15 calendar days after the excavation start date and such notice shall only describe an area in which the proposed excavation reasonably can be completed within the 15 calendar days.

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

{d} (e) The notice of intent of excavation shall contain the name, address and telephone number of the person filing the

notice of intent, 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 the specific location of the excavation.

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

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

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

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

(c) For operators of tier 2 facilities that desire direct contact with the excavator, the notification center shall provide the excavator with the name and contact information of the affected operator that has facilities recorded with the notification center in the area of the proposed excavation.

(b) (d) ~~Notification as required by K.S.A. 66-1804 and amendments thereto,~~ to operators as defined in subsection (b) 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. 66-1804, and amendments thereto.

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

~~(e)~~ (f) 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.

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

(h) A suitable record shall be maintained by operators of tier 2 facilities ^{that desire direct contact with the excavator} to document the receipt of notices from excavators.

Sec. 4. On July 1, 2008, K.S.A. 66-1806 is hereby amended to read as follows: 66-1806. (a) Within two working days, beginning on the later of the first working day after the excavator has filed notice of intent to excavate or the first day after the excavator has whitelined the excavation site, an operator served with notice, 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.

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

(c) The operator of tier 2 facilities shall not be required to provide notification of the tolerance zone for facilities

which are at a depth at least two feet deeper than the excavator plans to excavate but does have to notify the excavator of their existence.

{b} (d) If the operator of a tier 1 facility 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.

{e} (e) 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.

{d} (f) If the excavator has provided notice to an operator pursuant to K.S.A. 66-1804, and amendments thereto, and the operator fails to comply with subsections (a), (b) or (c) of this section or 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 to the operator 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 to the operator in those cases of gross negligence or willful and wanton conduct.

{e} (g) 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 subsection (a) of K.S.A. 66-1806, and amendments thereto, 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)~~ (h) 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.

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

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

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

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

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

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