

MINUTES OF THE SENATE UTILITIES COMMITTEE

The meeting was called to order by Chairman Pat Apple at 1:30 p.m. on February 4, 2009, in Room 545-N of the Capitol.

All members were present.

Committee staff present:

Mike Corrigan, Office of the Revisor of Statutes
Raney Gilliland, Kansas Legislative Research Department
Cindy Lash, Kansas Legislative Research Department
Ann McMorris, Committee Assistant

Conferees appearing before the committee:

Leo Haynos, Kansas Corporation Committee
Tom Shimon, Kansas One-Call
George Melling, Kansas Gas Service, Overland Park
Mark Schreiber, Westar
Dave Breuer, K.C. Construction, Basehor, KS.
Darci Meese, Johnson County Water District #1
Speaker Doug Mays, Topeka

Others attending:

See attached list.

Chair opened the hearing on:

SB 58 - Underground utility damage prevention act, amending tolerance zone definition.

Proponents

Leo Haynos, Chief of Gas Operations and Pipeline Safety, Kansas Corporation Commission, noted KCC supports **SB 58** which makes a technical correction to the definition of the term "tolerance zone" found in K.S.A. 66-1802. (Attachment 1)

Tom Shimon, Executive Director, Kansas One-Call, provided (1) written information on Kansas One-Call operations and background; (2) A paper on the Kansas Underground Utility Damage Prevention Act with changes mandated by **HB 2637** and their proposed amendments; and (3) a power point presentation on **SB 58**. He briefed the committee on history, tier members, revenue analysis, and its five year plan. (Attachment 2)

George Melling, Kansas Gas Service, Overland Park, testified in support of **SB 58** and in support of the amendment introduced by Kansas One-Call. (Attachment 3)

Mark Schreiber, Westar, testified in support of the changes identified in **SB 58**. (Attachment 4)

Dave Breuer, contractor and owner, K.C. Construction, Basehor, KS., spoke of the procedure currently in place which requires the contractor to call Kansas One-Call, and then to call other utilities that are not Tier 1 members. Such a procedure is time consuming and costly. (Attachment 5)

Darci Meese, Johnson County Water District #1, spoke in support of **SB 58**.

Doug Mays, former Representative and House Speaker, who helped draft the original bill on Kansas One-Call, provided background, and spoke against further amendments to the bill..

Written Only -

Bob Totten, Kansas Contractors Association (Attachment 6)
Elmer Ronnebaum, Kansas Rural Water Assn., Seneca (Attachment 7)

CONTINUATION SHEET

Minutes of the Senate Utilities Committee at 1:30 p.m. on February 4, 2009, in Room 446-N of the Capitol.

Chair opened for discussion. Questions were asked on cost for calls, number of calls, cities opting out, time involved and location of utilities. Discussion occurred on changing the date **SB 58** becomes law to January 1, 2010 rather than on date of publication to lessen the impact on Tier 2 and Tier 3 members.

Chair closed the hearing on **SB 58**.

Nelson Krueger who served as Chairman of the E911 Task Force, provided a clarification memo on questions from Senators Brownlee, Emler and others about the State of Kansas E911 Task Force. (Attachment 8)

The next meeting is scheduled for February 5, 2009.

The meeting was adjourned at 2:30 p.m.

Respectfully submitted

Ann McMorris
Committee Assistant

Attachments - 8

GUEST LIST
SENATE UTILITIES COMMITTEE
FEBRUARY 4, 2009

<u>NAME</u>	<u>COMPANY</u>
George Mellini	KANSAS GAS SERVICE
David K. Brewer	K.C. CONST. INC.
Tom Shimon	Kansas One-Call
LON STANTON	NORTHERN NATURAL GAS CO.
Roy Hein	Hein Law Firm, Ltd
Leo Haynos	Kansas Corporation Commission
Wes Ashton	Black Hills Energy
Dawn Jester	One Call Concepts
Jennis Schwantz	Ks Rural Water
EMER RONNEBAUM	KS RURAL WATER
Darci Meese	WaterOne
DAVE HOLTHAYS	KFC
TOM DAY	KCC
Mark Schreiber	Westar
Scott Jones	KCPK
Dina Fisk	VERIZON
Joe Mosimann	Hein Law Firm

GUEST LIST
SENATE UTILITIES COMMITTEE
FEBRUARY 4, 2009

NAME

COMPANY

Nelson Krueger PAR Electric

MIKE REECHT ATMOS

Mik Nuttals KRITC

Jim Gartner ATIT

LARRY BERGL MIDWEST ENERGY

Mike Murray Embury

Nick Jordan Capital Strategies.

Ron Hein Hein Law Firm, PLLC

Marge Petty kcc

Empty table rows for additional guest entries.



*Kathleen Sebelius, Governor
Thomas E. Wright, Chairman
Michael C. Moffet, Commissioner
Joseph F. Harkins, Commissioner*

**Before the Senate Utilities Committee
Comments by the
Staff of the Kansas Corporation Commission
February 4, 2009**

Senate Bill 58

Thank you, Mr. Chairman, and members of the Committee. I am Leo Haynos, Chief of Gas Operations and Pipeline Safety for the Kansas Corporation Commission, and I am appearing today on behalf of the KCC. The Commission supports Senate Bill 58 which makes a technical correction to the definition of the term "tolerance zone" found in K.S.A. 66-1802.

The Kansas Underground Utility Damage Prevention Act, (KUUDPA), establishes the rules for communication between the excavators and utilities in order to prevent damage to buried infrastructure and to prevent accidents. The rules can be summarized as excavators being required to notify the utility of a planned excavation and the utility being required to mark the horizontal location of its buried facilities. In the industry, the practice of marking the location of the buried facility is known as a "locate". In order to provide locates, the utility must rely on maps with measurements from known reference points, or it must rely on instruments designed to electronically locate the buried facility. Because there are no accurate means of assuring the depth of a buried facility, the utility is only required to provide the horizontal location of its facility. Both excavators and utilities recognize that locates cannot be considered to be 100% accurate. Therefore, the law has established a tolerance zone which allows or "tolerates" a certain amount of inaccuracy in the locate. A tolerance zone allows any locate within the tolerance zone to be considered accurate. On the other hand, an excavator must use special care when working in the tolerance zone to avoid damaging the facility. For example, even though a mark placed on the surface of the ground 24 inches to one side or the other of a utility is an accurate locate in a 24-inch tolerance zone, from the excavator's perspective, extra care must be shown anywhere within those 24 inches of the paint mark or flag on the ground. Depending on where the excavator started digging, the area requiring extra care could entail a zone up to 48 inches long and as deep as the existing utility.

Senate Utilities Committee
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In the 2008 legislature, HB 2637 amended the definition of tolerance zone to mean “the area not less than 24 inches of the outside dimensions in all horizontal directions of an underground facility....” I believe the intent of this change in HB2637 was to specifically prohibit any requirement holding utility operators to a locate accuracy of less than 24 inches. HB 2637 accomplished this goal. However, by using the phrase “not less than” the bill removed the maximum boundary of the tolerance zone. Without a maximum boundary for utility locates, excavators would not have any workable guidance on where to exercise special care. While it may be possible that the KCC could define the maximum boundary of the tolerance zone in rules and regulations, we believe a concise statutory definition would provide clearer guidance to the regulated community.

SB 58 proposes to define the tolerance zone as, “the area *within* 24 inches of the outside dimensions in all horizontal directions of an underground facility....” The proposed language would set the maximum boundary of the tolerance zone at 24 inches, unless otherwise provided in statute. In Staff’s opinion the phrase, “within 24 inches” precisely defines the tolerance zone boundary at 24 inches. Not only does it set a maximum boundary, but the phrase also sets a minimum boundary because it encompasses the total horizontal distance from the outside diameter of the pipe to the 24-inch offset measurement. In other words, a requirement reducing the tolerance zone to something less than 24 inches would not be allowed by the proposed language because it would encompass an area less than the requirement.

For operators of water or wastewater facilities, HB 2637 provided the option of the operator requesting a tolerance zone of “not less than” 60 inches. Using the same reasoning as applied to the 24-inch tolerance zone, SB 58 replaces the phrase, “not less than” with the word, “within”. The flexibility provided by HB 2637 for requesting a larger tolerance zone for water and wastewater operators is not affected by this amendment.

This concludes my testimony, and I would be happy to answer any questions you may have.



Kansas One-Call
8100 E. 22nd St. N., Bldg 2300
Wichita, KS 67226

SB 58

Before the Senate Utilities Committee
Comments from Kansas One-Call
February 4th, 2009

Thank you, Mr. Chairman and members of the Committee. I am Tom Shimon, Executive Director of Kansas One-Call System. Kansas One-Call was created in 1983 to provide excavators and the general public with the ability to inform multiple owners of underground facilities of intended excavation, statewide, with just one phone call. We provide our services 24 hours a day, seven days a week.

For the past 25 years, Kansas One-Call is a not-for-profit corporation that has operated as the statewide notification center providing the communications link between the excavator and the underground facility members. Kansas One-Call does not locate the underground facilities--that is the responsibility of the facility owner(s). The service we provide is free of charge to the excavator and/or homeowner. The cost of providing these services is paid by the underground facility members on a "per ticket" basis. Our membership currently stands at 735 members. Membership is open to anyone who owns or operates underground facilities.

As a corporation, we publicly state that we strive to provide excellent notification services for the excavators, member utilities, promote damage prevention and the protection of the public welfare statewide.

Legislative language passed this past year creates a multi-call system. While it may be workable and look good on paper, it will be very inefficient, confusing and may be difficult to enforce. The excavator will be required to call Kansas One-Call, and then call those utilities who are not Tier 1 members. This can or will be very frustrating for the excavator. This past year, KOC processed more than 470,000 locate requests statewide and the new legislation will require excavators to place an additional 470,000 notices to Tier 2 and Tier 3 members of their planned excavation (which is an estimated **31,000 hours** of additional excavator time).

The Kansas One-Call Board of Directors has taken a position on the multi-tiered classes of underground facility membership that is presented in the current legislation. The board believes that this discriminates one class of membership against another. A Tier 1 member has no choice but pay the full cost of doing business while Tier 2 and

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Senate Utilities Committee
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Attachment 2-1

Tier 3 members pay only a partial cost, causing the Tier 1 members to subsidize the cost to operate the not-for-profit call center.

Kansas One-Call supports the changes made in SB 58 correcting the definition of the "tolerance zone."

Furthermore, I propose the following language changes be adopted by the committee to amend SB 58. Please refer to the "Kansas Underground Utility Damage Prevention Act – With Changes Mandated by HB 2637" document for the actual language changes being proposed today.

1. Eliminate from section 66-1802, sub-section (r), any and all reference to "Tier 3 facility." The inclusion of this language this past year creates a clear disparity between members of the same class (municipalities of various populations that distribute water and/or wastewater and those that distribute electricity and/or gas to their customers). One city has already adopted an ordinance that declares it is not subject to be included in KUUDPA due to a Kansas constitutional clause, "Home Rule", legislation that does not apply uniformly to ALL cities.

Let's take a look at what this means to two utilities of the same size. One is a Tier 1 member and the other is a Tier 3 member.

- The Tier 1 member receives 100,000 excavation notices from the notification center. They would pay \$120,000 per year (at the current rate of \$1.20/notice).
- The Tier 3 member would receive 100,000 referrals from the notification center and only pay \$500 per year. That's only \$0.005 per referral!

In all cases, the Tier 1 members will be subsidizing the additional cost of referring the excavator to the Tier 3 member(s). Additionally, the Tier 3 member class also has a board seat while only paying \$500 per year. This is definitely not parity.

2. Eliminate 66-1804(b). Making this change returns the statute back to its original form where the excavator is required to notify all underground utilities of their intent to excavate in a particular area with one notification to a single notification center. All records will be kept in one notification center that the KCC has access to, to enforce the KUUDPA. Eliminates any confusion on the official start date and times that the utility has to mark the excavation area and that the excavator uses to begin his work. This also eliminates any conflict with section 66-1803 of the statute which states; "An excavator **shall** not engage in excavation near the location of **any** underground facility without first having ascertained, in the manner prescribed in this act, a location of all underground facilities in the proposed area of the excavation."

3. In sub-section (f), which would now be sub-section (e), add the following to end "prior to locates being performed." This allows the utility to request the excavator to whitenline the area prior to locating. This is where this requirement needs to be instead of being in 66-1805(k) "Notification Center."
4. Insert in 66-1805(a) – "The notification center shall provide prompt notice to each affected member of any proposed excavation." Adding this language returns this sub-section back to its original form.
5. Eliminate 66-1805(b), (c), (e), (h), (i), & (j). Eliminating these sections creates only one class of membership with the notification center whereby all members are treated equally and share equally in the cost per notification of the notification center. Let's take a quick look at the cost disparity of leaving two classes of membership, Tier 1 and Tier 2 members.
 - A Tier 1 member receiving 10,000 notifications a year would pay \$12,000 per year (at the current ticket price of \$1.20).
 - A Tier 2 member receiving the same 10,000 referrals would only pay \$6,000 per year (which is all tickets at 50% of the Tier 1 fee).
 - Again not parity, but subsidization.
 - Also, "Home Rule" could be applied if a municipality distributing gas and/or electricity is required to be a Tier 1 member while a municipality of the same size distributing water and/or wastewater is allowed to be a Tier 2 member.

The current legislation requires KOC, if it wishes to remain the notification center, to accommodate more than one class of membership which is against its current corporate by-laws. It also requires significant modification of the ticket processing software, estimated to cost around \$100,000, an amount that will have to be shouldered by the current membership. Plus, significant costs in training and education to the call center staff, excavators and members.

As stated before, KOC has 735 member utilities, broken down as follows:

Pure Tier 1 members (gas, elec, phone, cable, etc...)	385
Municipalities that distribute gas and/or electric	154
Municipalities with water and/or sewer only	125
Rural Water Districts	71

Non-members identified:

Municipalities with water and/or sewer only	357
Rural Water & Sewer Districts	278

Potential Tier 3 Members (5 are current members)	7
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KOC cost/revenue analysis (estimated using 2008 ticket volumes and 2009 ticket prices):

Current ticket (notice to excavate)	2009 Actual	\$1.20
If all members were of the same class	2010 Estimated	\$1.09
With Tier 1 and Tier 2 members	Denied Revenue	\$315,803*
With Tier 1, Tier 2 and Tier 3 members	Denied Revenue	\$424,502*

*This "Denied Revenue" will need to be recovered to subsidize the cost of the notification center's operation by the Tier 1 members.

In 2007, the KOC Board of Directors approved a "5-year pro-rated membership plan" for new water and wastewater members. This plan was and is designed to allow new members time to get used to the one-call process, understand their ticket volumes and experience a progressive cost structure in order to begin building up their annual budgets. The fees for new members that join under this plan are as follows:

- 1st year – No Cost
- 2nd year – 25% of the current price per ticket
- 3rd year – 50% of the current price per ticket
- 4th year – 75% of the current price per ticket
- 5th year – Full Cost

To date: 21 municipalities have joined under this plan
71 municipalities have been sent a membership packet that includes information on the "5-year plan"

KOC believes that fees of any kind should not be included in legislation for the simple reason that anytime the Board decides to modify its rate plan, the statute would need to be opened for any action to take place. It is also KOC's belief that any language that legislates fees tramples on our members' rights to govern KOC.

6. 66-1805(d) – Now (b) – Returns this language back to the language prior to 2008.
7. 66-1805(k) – This language does not fit in this section of the statute and if amended, is already addressed in 66-1804(f) or the new (e).
8. 66-1805(l) – Now (e) – Kansas One-Call System, Inc, began as a voluntary association of member utilities, formed as a Kansas corporation (ID #0833582) on October 27, 1983, ten years before the Kansas Legislature adopted the KUUDPA. KOC is a non-profit organization whose members are comprised of a majority of utilities across the state of Kansas. When the Kansas Legislature adopted the KUUDPA, KOC became the *de-facto* "notification center," a key component of the KUUDPA. The assumption of the role was not by appointment

or by statutory mandate, but rather by happenstance since even prior to the adoption of the KUUDPA, KOC was performing the functions as a notification center (and has been doing so for the past 25 years).

KOC argues strongly that it is not a "public agency" subject to the KOMA and KORA statutes of the state. This position is based on over 30 years of state Attorney General opinions regarding who is and who is not subject to the requirements of KOMA & KORA.

Kansas One-Call System, Inc is, and has always been, "open" with the information and records it provides to its members. While you may hear testimony from one organization or more to the contrary, please allow me to explain. I testified before the Special Committee on Utilities on September 15, 2006 on how many complaints/inquiries our customer service representatives (CSR's) receive each day regarding why certain entities are not members of KOC. This data/results I provided was obtained by walking the call center floor just days prior to my testimony, speaking to the individual CSR's (Customer Service Representatives) to arrive at that figure. Not long after that testimony, I received a letter from a non-member organization requesting a copy of this data. I responded with a phone call to the requestor explaining again how the data was collected and that it was not recorded in any form and that I could not help them.

To this day, we still do not "officially" record general complaints of this nature that we receive...we generally deal with them in one of four ways: 1) KOC takes corrective action; 2) KOC changes the policy that deals with the complaint; 3) KOC refers the complainant to the KCC to deal with the situation; or 4) KOC does its best to explain to the party why it is out of KOC's jurisdiction or control to remedy such complaint. However, if KOC receives specific complaints about an operator or any other staff person, these are documented and filed along with the corrective action taken if necessary.

In fact, several people in this room today were party to such an event one month ago in Kansas City during a utility/excavator/regulatory meeting. Several participants asked why certain entities are not members of the notification center and were told by the notification center to contact them directly. Some of those here today tried to explain the remedies in place with current legislation. For the record, these complaints were not documented and if documentation of this complaint is requested again, they will get the same answer that I provided a couple of years ago.

KOC does treat certain documents and records as private, such as notices of excavation. KOC treats these records as being owned by the excavator and the member utility that received the excavation notice. Not too long ago, KOC had a certain excavator request all notices from another excavator in the state who thought that he was losing out on work from a specific utility. KOC refused the request as it was a matter between him and the utility and not any others. A

few other documents that are kept confidential are the member's mapping/utility information, specific member personnel information, etc...

Kansas One-Call recognizes the fact that all "members" should have open and un-hindered access to business documents and financial records as they are the owners of the corporation. Currently this process is dictated and handled with corporate by-laws and operating policies adopted and modified from time-to-time by the KOC Board of Directors. With this in mind, KOC requests that any language that pertains to "public agency", "KOMA" and/or "KORA" be removed and replaced with language such as:

"The notification center shall maintain normal business and financial records in accordance with Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants. Such documents shall be made available to any member, upon request, at no charge." (See the remainder of this amended section in the statute handout).

I would also like to take a moment to state that the KCC has open and un-hindered access to all of our call center notification data to assist them in enforcing the KUUDPA. To my knowledge, no other notification center in the country has allowed the regulatory body access to their information as freely as KOC has. The KCC regularly attends our board and operating committee meetings to address any and all issues that arise. Not once, in the past 12 years that I have been associated with KOC, has *anyone* been turned away from attending or participating in *any* meeting of the corporation.

For the many reasons stated above, it is KOC's opinion that the requirement for the corporation to be subject to KOMA and KORA is onerous and oppressive on the day-to-day operation and does nothing but increase our cost of providing service to our members. Each increase of \$25,000 to our operation increases our cost of service to our members by \$0.01 per notification. KOC estimates the cost of compliance would be around \$100,000 per year or an additional \$0.04 per notification. KOC operates with a very lean staff of three, (myself and two public relations field personnel). KOMA and KORA would require KOC to hire an additional staff person plus incur the associated legal fees to remain compliant with all of the requirements of KOMA and KORA.

If it is the intention of the Legislature that the "notification center" should be a "public agency" or a "state agency", then funding should be sought from the state to create such an agency. KOC believes that going against 30+ years of Attorney General Opinions on who is and who is not a "public agency" constitutes setting a dangerous precedent on the hijacking of a private corporation(s) through future legislation.

KOC believes that the legislature used the creation of the "Sunflower Foundation" as a precedent for this action. However, the Sunflower Foundation: Health Care for Kansas was established pursuant to the settlement agreement

entered into by the Attorney General in the action filed by Blue Cross and Blue Shield of Kansas, Inc., in the district court of Shawnee County, Kansas (case no. 97CV608), shall be and is hereby deemed to be a public body and shall be subject to the open meetings law.”

These are two totally different entities. The Sunflower Foundation was created by the state of Kansas, while KOC was created by its members 10 years prior to any legislation being passed.

9. 66-1805(m)(n)(o)(p) – Remove from these sections any/all reference to Tier 3 members and KOMA/KORA.

Once amended, KOC still believes that the remaining language in these subsections interferes with a duly organized corporation of the state, its policies and bylaws, as well as the members’ rights to govern KOC. At this time, KOC will not object to these remaining statute requirements being in the KUUDPA statute.

I do, however, want to make it clear that **each member** of the Board of Directors of KOC is elected annually by the membership at its annual meeting held in May of each year. Current members of the KOC Board are represented from the following:

Voting Members

Kansas Gas Service	Butler County RWD#5
Westar	Midwest Energy
City of Ottawa	Panhandle Eastern
Northern Natural Gas	Sedgwick County Electric Coop
KCPL	AT&T
Cox Communications	Open (Exploration & Production)

Advisory Members

KS Dept. of Trans.	KS Contractors Assn.
Two open advisory slots	

In addition to the Board of Directors, KOC utilizes an Operating Committee to handle some of the more “day-to-day” issues involved with operating the call center. While all business-affecting decisions are made by the KOC Board, some of the initial work on discussion topics is done by the Operating Committee. The Operating Committee is not limited to a certain number of participants, and currently is comprised of:

- 18 KOC member companies; and
- 10 advisory members (including KOC staff, KCC staff, contractors and locators)

KOC does prepare an annual report for the members, and utilizes two independent Certified Public Accounting firms (BKD & Grant Thornton) to maintain and record its financial records, perform a review and file annual tax returns. KOC currently solicits proposals for the operation of the notification

center every 3-5 years. KOC also investigates the feasibility of operating the notification center without the use of a third party contractor on a routine basis. KOC does conduct a cost of service study on an annual basis which determines the following year's ticket price.

Thank you for the opportunity to offer these amendments to SB58 and the time to express these thoughts today. This concludes my testimony, and I will gladly answer any questions you may have.

Respectfully,

Tom Shimon
Executive Director
Kansas One-Call System, Inc.



**Know what's below.
Call before you dig.**



Dig Safely.

Kansas One-Call 5 Year Plan for Exempt Utilities

Reasons for 5 Year Plan: Kansas One-Call (KOC) currently has over 300 municipal and rural water district members participating with our excavation notification system. Under current state statute, excavators are only required to place their dig notice with KOC. As a result, numerous non-member facility owners complain that excavators do not also call them directly after calling KOC. KOC strongly encourages each caller to notify non-member utilities before beginning their excavation to protect themselves as well as non-member utilities, but the presence of utilities who are not notified by KOC often creates confusion with excavators. To help reduce this confusion, KOC is offering a new membership incentive called the **Five Year Plan**. This offer is for all exempt utilities who currently are not members of KOC. Currently, exempt utilities include water, sewer and rural production petroleum lead lines.

5 Year Plan Details: All currently required membership forms and database maps will be required. In order to qualify for the 5 year plan, the applicant must own or operate facilities in Kansas that currently are not part of the one call process and we strongly encourage the applicant to agree to receive locate tickets from Kansas One-Call via email.

Billing Details: New water and sewer members will be charged the annual \$25 membership fee. Based on current cost structure after the 1st year free, the cost per notification will be a percentage of full membership:

1st Year - Free / 2nd Year - 25% / 3rd Year = 50% / 4th Year = 75% / 5th Year = 100%

(Currently in 2009, full membership is \$25 per year, plus \$1.20 for each notification received.)

Membership Benefits: When an excavator calls in a locate request to KOC, members within the notification area of the planned excavation are notified and announced to the caller. This should reduce the number of damages caused by not being notified when an excavator only calls Kansas One-Call as required by state law. Some cities and towns may also be able to check on compliance of their permit processes by both excavators and homeowners. We hope to encourage more voluntary membership by exempt facility owners with this phased-in cost approach.

Yes, I am interested. Please send a membership packet to:

Company: _____

Name: _____

Address: _____

Telephone: _____

Email Address: _____

Mail or Fax to:

**Kansas One-Call Five Year Plan
8100 E 22nd St. North, Bldg. 2300
Wichita, KS 67226
Phone 316 687-2102 / Fax 316 618-8786
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Kansas One-Call
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2009 LEGISLATIVE CHANGES

Significant changes to the Kansas Underground Utility Damage Prevention Act (KUUDPA) occurred during the 2008 legislative session. Many of these changes will affect excavators and underground facility operators.

Effective July 1, 2009 water and wastewater facility operators shall become a member of Kansas One-Call (KOC) based on multi-tiered membership categories created by the 2008 legislature per HB 2637.

Tier 1 members are the traditional class of members, which includes buried electric and communications utilities, and gas and liquid pipelines. Up to this point, those water and wastewater facilities that participated in this class did so voluntarily and can continue to participate as a Tier 1 member if they wish. When an excavation notice is filed with the call center, a notice is sent to each Tier 1 member notifying them of the excavation information. This continues with the new legislation. The 2009 cost to members is \$25 annually, plus \$1.20 per notification. KOC has a 5 year plan for Tier 2 operators that want to try the notification option at a phased in reduced cost.

Tier 2 members, a new class for water & wastewater only, will be required to register their facilities with KOC in the same manner as a Tier 1 member. However, the call center will not provide them with a ticket or a notice of the excavation information. When the excavator contacts the call center, the information will be taken and sent to Tier 1 members. The excavator will then be provided with the utility name, and contact information of the Tier 2 member and will be instructed to contact them directly. It is IMPORTANT to note that KOC will NOT be sending them any of the excavation information. THE EXCAVATOR MUST notify them directly, with a second call, to have the excavation area marked. Tier 2 referrals are to be 50% less than Tier 1, but not available until later.

Tier 3 members are water and wastewater utilities that serve 20,000 customers or more and meet other specific requirements. These members will be handled in the same manner as Tier 2 members for a \$500.00 yearly fee.

A few other important changes in the statute include the following;

- An operator of a water or wastewater facility may elect to use a tolerance zone for such water or wastewater facility in which the tolerance zone will be larger than the standard 24 inches, but no larger than 60 inches of the outside dimensions of the underground facility. The water or wastewater operator must inform the excavator when this option has been declared.
- Upon request of the operator, the person filing the notice of intent to excavate shall whiteline the proposed excavation site prior to locates being performed.
- If the operator of a Tier 2 facility 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.
- 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.
- If the excavator has provided notice to an operator pursuant to this act and amendments thereto, and the operator fails to comply or notifies the excavator that it has no underground facilities in the area of the planned excavation, 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.
- Effective July 1, 2008 all Tier 2 facilities installed by an operator shall be locatable.

New "Administrative Regulations" are being drafted to clarify and accompany this new version of the statute.

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2-10

(Published in *The Hays Daily News* on August 19, 2008 and August 26, 2008)

CHARTER ORDINANCE NO. 24

A CHARTER ORDINANCE EXEMPTING THE CITY OF HAYS, KANSAS FROM THE PROVISIONS OF K.S.A. 66-1805 AND PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME SUBJECT.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF HAYS:

Section 1. The City of Hays, by the power vested in it by Article 12, Section 5 of the Constitution of the State of Kansas, hereby elects to exempt itself from the provisions of K.S.A. 66-1805, part of an enactment known as the Kansas Underground Utility Damage Protection Act, which enactment applies to this city but does not apply uniformly to all cities.

Section 2. The following is hereby substituted for the provisions of K.S.A. 66-1805, as amended:

Notification center. (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 may become a member of the notification center. (b) Notification, as required by K.S.A. 66-1804, and 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. 66-1804, and amendments thereto. (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. (d) A suitable record shall be maintained by the notification center to document the receipt of notices from excavators as required by this act.

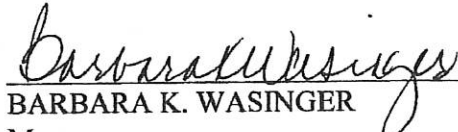
Section 3. This Charter Ordinance shall be published once each week for two consecutive weeks in the official city newspaper.

Section 4. This Charter Ordinance shall take effect 61 days after final publication unless a sufficient petition for a referendum is filed, requiring a referendum to be held on the ordinance as provided in Article 12, Section 5 of the Constitution of the State of Kansas, in which case this Charter Ordinance shall become effective upon approval by a majority of the electors voting thereon.

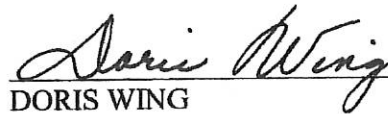
CHARTER ORDINANCE NO. 24

Page 2

Passed by the Governing Body, not less than two-thirds of the members-elect voting in favor thereof, this 14th day of August, 2008.


BARBARA K. WASINGER
Mayor

ATTEST:


DORIS WING
City Clerk

(SEAL)



Kansas Underground Utility Damage Prevention Act

With Changes Mandated by HB 2637

Statute 66-1801

Kansas underground utility damage prevention act. This act shall be known and may be cited as the Kansas underground utility damage prevention act.

Statute 66-1802

Definitions. 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**, 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**, 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.

~~(r) "Tier 3 facility" means a water or wastewater system utility which serves more than 20,000 customers who elects to be a tier 3 member of the notification center pursuant to this subsection. The operator of a tier 3 facility shall:~~

~~(1) Develop and operate a locate service website capable of receiving locate requests;~~

~~(2) publish and maintain a dedicated telephone number for locate services;~~

~~(3) maintain 24-hour response capability for emergency locates; and~~

~~(4) employ not less than two individuals whose primary job function shall be the location of underground utilities. Operators of tier 3 facilities shall make either such website or contact information available to the notification center. The notification center shall collect and charge a fee of \$500 a year for each tier 3 facility. No other fee, charge or cost shall be assessed to a tier 3 facility by the notification center. Tier 3 members shall be subject to all provisions of 66-1804, 66-1805, 66-1806 and amendments thereto.~~

(r) ~~(s)~~ "Tolerance zone" means the area within not less than 24 inches of the outside dimensions in all horizontal directions of an underground facility, ~~except that a larger tolerance zone larger than 24 inches for a tier 1, 2, or 3 facility may be established by rules and regulations adopted under K.S.A. 2007 Supp. 66-1815, and amendments thereto. An operator of a water or wastewater facility may elect to define the use a tolerance zone as for such water or wastewater facility in which tolerance zone means the area within not less than 60 inches of the outside dimensions in all horizontal directions of an underground water or wastewater facility upon notification of the excavator. , except that a larger tolerance zone may be established by rules and regulations adopted under K.S.A. 2007 Supp. 66-1815, and amendments thereto. provided notice of such election is given to the excavator prior to locates being performed.~~

(s) ~~(t)~~ "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.

(t) ~~(u)~~ "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.

(u) ~~(v)~~ "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.

Statute 66-1803

Excavator's duty to ascertain location of facilities.

An excavator shall not engage in excavation near the location of any underground facility without first having ascertained, in the manner prescribed in this act, a location of all underground facilities in the proposed area of the excavation.

History: L. 1993, ch. 217, S. 3; July 1

Statute 66-1804

Notice of intent of excavation.

(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) ~~(e)~~ 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.

(c) ~~(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, whitenline the proposed excavation site when the description of the excavation location cannot be described with sufficient detail to enable the operator to ascertain the location of the proposed excavation, prior to locates being performed.

(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.

Statute 66-1805

Notification center.

(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. 2001 Supp. 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. 2001 Supp. 66-1804, and amendments thereto.

~~(e) Notification to operators as defined in subsection (c) 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.~~

(c) ~~(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 pursuant to subsection (e) to document the receipt of notices from excavators.~~

~~(i) The notification center shall charge and collect an annual membership fee in the amount of \$25 from each tier 2 facility member.~~

~~(j) The notification center shall charge a referral fee to tier 2 facility members in an amount no more than 50% of the referral fee rate charged to tier 1 facility members.~~

~~(k) Upon request of the operator, the person filing the notice of intent to excavate shall whitenline the proposed excavation site prior to locates being performed.~~

~~(e) (f) The notification center established pursuant to this section shall maintain normal business records and financial records in accordance with Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants and make available to any member, upon request, at no charge. be and is hereby deemed to be a public agency and shall be subject to the provisions of the open records act, K.S.A. 45-215 et seq., and amendments thereto, and the open meetings act, K.S.A. 75-4317 et seq., and amendments thereto, except that The notification center or board of directors, or successor managing organization shall not disseminate, make available or otherwise distribute data or information provided by an operator of a tier 1, 2 or 3 facility unless such dissemination, making available or distributing is necessary for the state corporation commission or the notification center to carry out legal duties or specific statutory duties prescribed under this chapter.~~

~~(m) On and after July 1, 2009, the notification center's board of directors shall include two members from tier 2 facilities. and 1 member from tier 3 facilities.~~

~~(n) The notification center shall prepare an annual report which describes the activities of such center and shall provide copies of such reports to each member of the notification center. An annual audit of the notification center shall be conducted by an independent certified public accountant. The notification center shall provide copies of such reports to each member of the notification center. and shall be subject to the open records act, K.S.A. 45-215, et seq., and amendments thereto.~~

~~(o) The notification center shall solicit proposals for operation of the notification center not more than every five years which shall be awarded in an open meeting by the board of directors of the notification center. The bidding process prescribed by this subsection shall be subject to the open records act, K.S.A. 45-215 et seq., and amendments thereto.~~

(p) The notification center shall conduct a cost of service audit not more than every five years or as otherwise requested by the board of directors of the notification center or a majority of the members of such center.

Statute 66-1806

Identification of location of facilities; duties of operator; liability for damages.

(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.

(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) 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.

(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) or (b) or ~~(e)~~ or notifies the excavator that it has no underground facilities in the area of the planned excavation, 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.

(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. 2001 Supp. 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.

(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.

(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, 2008, shall be locatable.

Statute 66-1807

Emergency excavations.

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

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

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

History:

Statute 66-1808

Application of other laws.

This act shall not be construed to authorize, affect or impair local ordinances, resolutions or other provisions of law concerning excavating or tunneling in a public street or highway or private or public easement.

History: L. 1993, ch. 217, S. 8; July 1.

Statute 66-1809

Excavator's duty to exercise reasonable care.

(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.

History:

Statute 66-1810

Contact with or damage to facility; procedure.

When any contact with or damage to any underground facility occurs, the operator shall be informed immediately by the excavator. Upon receiving such notice, the operator immediately shall dispatch personnel to the location to provide necessary temporary or permanent repair of the damage. If the protective covering of an electrical line is penetrated or dangerous gases or fluids are escaping from a broken line, the excavator immediately shall inform emergency personnel of the municipality in which such electrical short or broken line is located and 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.

History:

Statute 66-1811

Effect of violation of act, liability for damages; application of other laws.

(a) In a civil action in a court of this state when it is shown by competent evidence that personal injury, death or other damages, including damage to any underground facilities, occurred as a result of a violation of this act, there shall be a rebuttable presumption of negligence on the part of the violator.

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

(c) Nothing in this act is intended to limit or modify the provisions of:

(1) K.S.A. 60-258a, and amendments thereto; or

(2) the national electrical safety code, which would otherwise be applicable.

History:

Statute 66-1812

Violation of act, civil penalties and injunctive relief.

Any person to whom this act applies, who violates any of the provisions contained in this act, shall be subject to civil penalties and injunctive relief as set out in K.S.A. 66-1,151, and amendments thereto, and any remedies established in rules and regulations promulgated by the state corporation commission in support of this act.

History:

Statute 66-1813

Administration and enforcement by corporation commission.

This act shall be administered and enforced by the state corporation commission of the state of Kansas. *History: L. 1993, ch. 217, S. 13; July 1.*

Statute 66-1814

Severability.

If any provision of this act or the application thereof to any person or circumstance is held invalid, the remainder of the act and the application of such provision to other persons or circumstances shall not be affected thereby.


History: L. 1993, ch. 217, S. 14; July 1.

Statute 66-1815

Providing for rules and regulations.

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

(b) This section shall be part of and supplemental to the Kansas underground utility damage prevention act.



“SB 58”
Senate Utilities Committee
February 4th, 2009

Kansas Underground Utility Damage Prevention Act
(KUUDPA)
K.S.A. 66-1802 to 66-1815



KOC History

- 1980 Can-U- Dig-It (four members)
- 1983 Kansas One-Call Incorporated
- 1984 90 Members
- 1993 Kansas Underground Utility Damage Prevention Act – Passed (251 members)
- 2008 735 Members
- 2008 Processed 470,000 locate requests

- KOC supports SB 58
- HB 2637 created a multi-call system
- Confusing, inefficient, difficult to enforce
- Three separate member classes
- Excavators required to make a second call
- Estimated additional 31,000 hours
- Discriminates one class of member against another (subsidization)

Utility / Member Grouping

- **Tier1:** *Oil, gas, electric, telecom.*
- **Tier2:** *All water and wastewater systems.*
- **Tier3:** *WW systems with more than 20,000 customers that elect to be Tier 3.*
- *Any municipality that also operates oil, electric, gas or telecom cannot opt to be Tier 2 or 3.*

- KOC proposes several amendments
- Delete 66-1802(r)
- Disparity between members of the same class
- "Home Rule"
- Municipalities adopting ordinances
- Seven potential members of this class
- Five are current members of KOC
- Member class gets a board seat

Tier 1 **vs.** *Tier 3*

- | | |
|---|--|
| <ul style="list-style-type: none"> ■ Example: Tier 1 Member ■ 100,000 Tickets per year ■ \$1.20 per Ticket ■ \$120,000 cost per year. | <ul style="list-style-type: none"> ■ Example: Tier 3 Member ■ 100,000 Tickets per year, which would make the cost of each referral LESS THAN \$.01. ■ Pay \$500 per year |
|---|--|

- Modify 66-1804(a)
- Delete 66-1804(b)
- Reconcile with 66-1803
- Add language in 66-1804(f)
- Restore language in 66-1805(a)
- Delete 66-1805(b)
- Delete 66-1805(c)
- Restore language in 66-1805(d)
- Delete 66-1805(e)(h)(i)(j)

- Creates one single notification center
- All members treated equally
- Share in the cost equally
- Cost to modify software, ed, training, etc...
- No "Home Rule"
- Don't confuse "member" with "facility"
- Tolerance Zone
- Marking allowances
- Tier 1 vs. Tier 2

Tier 1 vs. Tier 2

Example: Tier 1 Member

- **10,000** Tickets per year
- **\$1.20** per Ticket
- **\$12,000** Total Cost

Example: Tier 2 Member

- **10,000** Tickets per year
- Can't charge more than **50%** of a **Tier 1** charge. (**\$6,000**)

Tier 2 and the Call Center

- *Can't charge more than 50% of a Tier 1 charge.*
- *KOC to provide "name and contact information".*
- *Two Tier 2 members placed on KOC board.*
- *Tier 2's must keep their own records of excavator calls.*
- *One location for records*
- *KCC enforcement*

- Pure Tier 1 members – 385
- Municipalities with Gas/Elec – 154
- Municipalities with W&WW – 125
- Rural Water Districts – 71

Non-members identified

- Municipalities with W&WW – 357
- Rural Water Districts – 278
- Potential Tier 3 members - 7

Cost/Revenue analysis

- Current ticket price - \$1.20
- 2010 est. ticket price - \$1.09
- Eligible Tier 1 & Tier 2 – (\$315,803)
- HB 2637 Legislation – (\$424,502)
- No parity
- Requires subsidization

Five Year Plan

- 1st year – No Cost
- 2nd year – 25% of current ticket price
- 3rd year – 50% of current ticket price
- 4th year – 75% of current ticket price
- 5th year – Full Cost
- 21 municipalities have joined w/plan
- 71 municipalities have plan packets

- Delete 66-1805(k) doesn't belong in this section of the statute
- If 66-1804(f) is amended
- Modify 66-1805(l)
- Delete language "public agency"
- Delete language "KOMA" & "KORA"
- Insert replacement language
- Modify 66-1805(m)(n)(o)

2009 KOC Board Members

Kansas Gas Service	Butler Co. RWD#5
Westar	Midwest Energy
City of Ottawa (KMU)	Panhandle Eastern
Northern Nat. Gas	AT&T
Sedg. Co. Elec. Coop	KCPL
Cox Communications	Open (Ex & Prod.)

Advisory:

KS. Contractors Assn.	KDOT
Open	Open

2009 Operating Comm. Members

Comprised of:

18 Kansas One-Call member companies
10 Advisory members which include;

- Kansas One-Call staff
- Kansas Corporation Commission staff
- Contractors/Excavators
- Locator Personnel

Kansas One-Call

- Holds an Annual Meeting
- Election of Board Members
- Prepares an Annual Report for members
- Uses two independent CPA firms
- Solicits proposals for operations
- Investigates in-house solutions
- An annual cost of service study

Questions?

Tom Shimon
316-687-0494
tshimon@swbell.net



Before the Senate Committee on Utilities
Senate Bill 58
Testimony of George R. Melling, Manager – Claims and Risk
Kansas Gas Service, a Division of ONEOK, Inc.
7421 W 129th Street, Overland Park, Kansas
913-319-8627
February 4, 2009

Good afternoon Chairman Apple and members of the Committee. My name is George Melling. I am the Manager of Claims and Risk for Kansas Gas Service. I am testifying in support of Senate Bill 58 and in support of the amendment introduced by Kansas One Call.

I appreciate the opportunity to testify before you regarding this important issue. Kansas Gas Service has been and continues to be supportive of efforts by the legislature to enhance public safety including the reduction of damages and therefore exposure to risk arising from damage to underground facilities. Kansas Gas Service has long been a supporter of the Kansas One Call system as a means for all utility operators to make a joint effort to achieve these goals. During 2008 Kansas Gas Service recorded 1257 damages to our underground facilities. I point this out only for the purpose of emphasizing our interest in safety for both the public and our employees who must deal with the dangers of working with uncontrolled escaping natural gas.

Senate Bill 58 is written to clean up some technical issues created by the passing of House Bill 2637 during the last session which will go into effect on July 1, 2009. However, SB 58 leaves in place a confusing and cumbersome tiered system of membership in Kansas One Call (KOC) and the impact of this bill on Kansas Gas Service and system operators will be significant. As an example HB 2637 establishes reduced fees for these lower tiers of membership, thereby creating a financial burden to be placed on KOC which will be passed on to those members such as Kansas Gas Service who are and will remain full paying tier 1 members. As with any operation certain fixed costs exist regardless of how certain calls are to be handled. The KOC office has provided some information indicating that if the current provisions of HB 2637 stand, current charges to Kansas Gas Service for receiving a ticket from KOC will increase by about \$48,000 per year to cover additional operating costs.

While these numbers can be determined, the unknown cost of time and delays which will be incurred as we are required to make additional calls to these tier 2 & 3 members is also of great concern. In addition to operating our Distribution and Transmission systems, Kansas Gas Service is a major excavator in the State of Kansas. During 2008 Kansas Gas Service made approximately 31,000 calls for locates – by introducing the tier system

Senate Utilities Committee
February 4, 2009
Attachment 3-1

our personnel will be required to make approximately the same number of additional calls attempting to insure all underground facilities have been located prior to beginning our work.

Experience tells us that under the current system some excavators simply do not make the additional calls. And even though all excavators will be informed as to the number to call, there will not be any assurance that the call will be made in the future. This lack of effort sometimes results in damage to underground facilities in addition to the potential risk and service interruptions to the public, the very ones the law is intended to protect.

Kansas One Call has proposed changes to various provisions of HB 2637 which will improve public safety by strengthening the Underground Damage Prevention Act and remove the confusing and cumbersome tiered member system. In addition, this will allow KOC to establish ticket pricing based on actual expenses to be paid based on system usage. Kansas Gas Service endorses the effort of SB 58 and the changes introduced by KOC.

Thank you for the opportunity to testify today and I'd be pleased to stand for any questions.



MARK A. SCHREIBER
Director, Government Affairs

**Testimony of Mark Schreiber
Director Government Affairs, Westar Energy
Before the Senate Utilities Committee
On SB 58
February 4, 2009**

Good afternoon Chairman Apple and members of the committee. Thank you for the opportunity to provide testimony on SB 58.

Westar Energy supports the changes identified in SB 58. The change in the definition of "tolerance zone" on page 3 requires more accurate locates for water and wastewater facilities. The change helps Westar whenever we need to install or repair our facilities near these systems.

Westar Energy is a long-time member of Kansas One Call (KOC) and believes their efforts have enhanced the safety for all excavators and member utility company employees. Whether we are calling in for locates or responding to damage to our underground facilities, the service KOC provides is invaluable to us in terms of our customers' and employees' safety.

Last year, HB 2637 made several changes within the Kansas Underground Utility Damage Prevention Act (KUUDPA). This year, KOC has identified several areas that it believes could strengthen the system that will become effective on July 1, 2009. Westar Energy supports these efforts to enhance KUUDPA and establish a pricing system that reflects actual expenses based on system usage.

Thank you again for the opportunity to provide our testimony in support of SB 58. I will stand for questions at the appropriate time.

Senate Utilities Committee
February 4, 2009
Attachment 4-1

4

K. C. Construction, Inc.

Utility Contractor

P.O. Box 264 - Basehor, Kansas 66007

913-724-1474

SB 58

Before the Special Committee on Utilities
Comments from K.C. Construction, Inc.
February 4, 2009

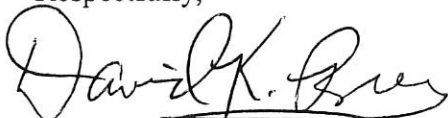
Thank you, Mr. Chairman and members of the Committee. I am David Breuer, Owner/President of K.C. Construction, Inc. I have been in business for 32 years as a Utility Contractor. I am also Chairperson of the CGA. Common Ground Alliance (CGA) is a member-driven association dedicated to ensuring public safety, environmental protection, and the integrity of services by promoting effective damage prevention practices. In recent years, the association has established itself as the leading organization in an effort to reduce damages to all underground facilities in North America through shared responsibility among *all* stakeholders.

The procedure currently in place requires the contractor to make a phone call to Kansas One-Call first, and then call all other utilities that are not Tier 1 members. This can be time consuming & costly to the contractor since you don't require everyone to be Tier 1 members. However, not to mention confusion trying to figure out what other utilities we need to contact.

As a contractor, I feel if you make exceptions to certain utilities, you are opening yourself up to potential damages that otherwise could have been prevented. My hope is to truly make it a One-Call system, so the customer and contractor can make just one call and get all the vital information to ensure public safety. This is important to protect the utilities in the area and not to disrupt any service to customers in the community.

Thank you for the opportunity to speak to you today regarding Senate Bill 58. This concludes my testimony. I would be more than happy to answer any questions you may have.

Respectfully,



David K. Breuer, Owner/President
K.C. Construction, Inc.

Senate Utilities Committee
February 4, 2009
Attachment 5-1

THE KANSAS CONTRACTORS ASSOCIATION, INC.



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MIKE MORRAND
Paola, Kansas
ED SEXE
Bonner Springs, Kansas
TROY SPORER
Oakley, Kansas
MARY SULLIVAN
Kansas City, Kansas

Testimony

Submitted by the Kansas Contractors Association

for the Senate Utilities Committee

regarding SB 58

February 4, 2009

The Kansas Contractors Association, an organization representing over 350 companies involved in the construction of highways and water treatment facilities in Kansas and the Midwest, is in basic support for SB 58 as it clears up some problems regarding tolerance zones for water lines. But it does not go far enough.

As outlined on page 3 lines 34 to 37, all tolerance zones for all facilities except water lines is 24 inches. We urge the committee to reduce the tolerance zones for water lines to be the same as other lines in the ground.

Excavators are used to a two foot tolerance zones but to allow an area as large as 10 feet wide is way out of line just for water lines. We believe those who have water lines in the ground should have a better idea where their lines are. They should not simply rely on an excavator to find the lines when a project gets underway. It is time consuming

Senate Utilities Committee

February 4, 2009

Attachment 6-1

and basically costly when a contractor runs into a water line.

In addition to this change, we still are disappointed that the "one call" system has actually become a multi-call system. Under the present law, it calls for an excavator to make several calls when he notifies of his plans to dig in the ground. We suggest that it truly become a One Call program. We urge the committee to make some changes in the Kansas Underground Utility Prevention Act. Specifically, we suggest that Section 66-1804(b) be eliminated. This change would take the statute back to the original form where the excavator would be required to make one phone call to a single notification center. It would make the system more efficient and put all utilities on the same level playing field.

I thank you in advance for your consideration and would be glad to answer any of your questions on this subject at the appropriate time.

Bob Totten
Kansas Contractors Association
785 224 4156
PO Box 5061
Topeka, Kansas 66605

6-2



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FAX 785/336-2751 • <http://www.krwa.net>

**Comments on Senate Bill 58
Before the Senate Utilities Committee
February 4, 2009**

Mr. Chairman and Members of the Committee:

The Kansas Rural Water Association appreciates this opportunity to comment on SB 58. Kansas Rural Water Association is a non-profit Association that provides training and technical assistance to cities, rural water districts, public wholesale water supply districts and other non-community water systems such as trailer courts and schools. The Association's membership presently includes 455 cities and 275 rural water districts and 12 public wholesale districts.

The Kansas Rural Water Association supported HB 2637 in the 2008 Session, which amended the statute to include memberships consisting of Tier II and Tier III levels of participation and further defined responsibilities and charges to those levels of membership in the Kansas One Call Notification Center. The statute, K.S.A. 66-1802, goes into effect on July 1, 2009.

Kansas Rural Water Association has worked to inform its member and non-member public water supply and wastewater utilities of the responsibilities for cities and rural water districts to comply with the provisions of HB 2637. Such efforts include publication of the regulations and also presentations at various training seminars. The Association has also continued to work with scores of public water, wastewater and municipally-owned gas systems to improve their mapping products using GPS mapping and associated technologies. The Association has published and made available through its Web site (www.krwa.net) the areas served by individual rural water and public wholesale water supply districts. Those pdf maps are available for viewing or download at no charge by the public. Those maps show the approximate locations of all major water system pipelines in rural areas and features such as wells, interconnections and transmissions lines between systems, pump stations, tanks, etc. The Association has also posted an online directory containing more than 7700 contacts in water and wastewater utilities that is easily searchable for anyone to determine contact information for the Association's 800 member utilities. We have advised Kansas One Call of these features.

Kansas Rural Water Association supported HB 2637 last year because the final Bill took into consideration concerns that were expressed by water and wastewater utilities.

The Kansas Rural Water Association supports SB 58 to clarify the definition of "tolerance zone."

Respectfully,

A handwritten signature in black ink that reads "Elmer Ronnebaum".

Elmer Ronnebaum
General Manager

Senate Utilities Committee
February 4, 2009
Attachment 7-1

Clarification Memo to the Kansas Senate Utilities Committee
February 4, 2009

From: Nelson Krueger

RE: Questions from Senators Brownlee, Emler and others about the
State of Kansas E911 Task Force

The E-911 Task Force was formed on June 20, 2000 in response to a legislative directive of the 2000 Legislature. The Task Force of **14 members** made up of a cross section of stake holders met as a committee of the whole, once each month, July through November, 2000. One additional sub-committee meeting was held in August. The meetings were well attended both by Task Force members and other interested parties from the public.

The Report to the Legislature was complete and distributed on December 6, 2000, a month earlier than required and **less than 6 months** in the making.

A copy of the report is attached for your convenience. Perhaps it will be of some assistance in your deliberations.

Senate Utilities Committee
February 4, 2009
Attachment 8-1



Report to the Legislature

Senate Commerce Committee
House Utilities Committee

State of Kansas
E911 Task Force

Nelson Krueger
Chairman

Susan Sherwood
Vice-Chairman

Members:

Roger Bales

Frank Balestrere

R. Keith Faddis

J. Patrick Lawless

Thomas A. Sullivan

William Butler

David Rosenthal

David Lake

Lisa Durand

Alvan Johnson

Col. Don Brownlee

Guy McDonald

8-2
December 6, 2000

8-2

REPORT AND RECOMMENDATIONS
from the
WIRELESS E- 911 TASK FORCE

Contents:

- I. Introduction
- II. Legislative Directive
- III. Process and Approach
- IV. Findings, Conclusions and Recommendations
- V. Affected statutes

Attachments:

- A Task Force Membership
- B Senate Substitute for House Bill 2945

I. Introduction

The Federal Telecommunications of Act of 1996 ("Federal Act") was landmark legislation that has forever changed the landscape and operating environment of the telecommunications industry. The emphasis of the Federal Act was on change through competition in the local exchange market and on encouraging local and long distance carriers to innovate and provide enhanced services. Competition in the local exchange market was to be the catalyst to foster better service at lower rates for consumers.

In June, 1996, just a few months after passage of the Federal Act, the Federal Communications Commission ("FCC") issued its First Report and Order, FCC 96-264¹, which created rules governing the availability of Basic 911 service and the implementation of Enhanced 911 service ("E-911") for wireless telephone users. In this order and in subsequent rulings, the FCC established time frames, quality and conditions for emergency service for wireless telephone users. The FCC established the following milestone dates for wireless interconnection with Public Safety Answering Points ("PSAPs"):

October 1, 1997: Every wireless 911 call from a wireless handset using a Wireless network covered by this order, or from comparable text telephone (teletype), must have the number forwarded to a PSAP

¹ In FCC Docket 94-102 In the Matter of Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems.

April 1, 1998 (or six months after a valid request from a PSAP, whichever is later): Phase I wireless 911 service², was to be in place. This required, all wireless providers, to relay the telephone number of the wireless caller, and the location of the cell tower receiving the signal, to the appropriate PSAP.

October 1, 2001 (or six months after a valid request from a PSAP, whichever is later): Phase II wireless E-911 service³, is to be operational. (If the service has been requested by a PSAP.)

In December, 1997, The (Kansas) Joint Committee on Economic Development submitted a report to the Legislature on wireless E-911 and extension of the 911 user fee to wireless users. The Joint Committee recommended that the information it had gathered during its deliberations be referred to the appropriate legislative standing committees addressing telecommunications issues.

In January, 1999, Senate Bill 63 was introduced in the Kansas Legislature. The bill was promoted by the Kansas Association of Counties and supported by the League of Kansas Municipalities. The proposed legislation requested extension of the 911 fee on wireline telephones to wireless telephones. This proposed legislation, coupled with the testimony from interested stakeholders, was the major impetus for the Senate Commerce Committee to seek additional information on Kansas 911 systems.

Accordingly, early in the 1999 legislative session, the Senate Commerce Committee requested that the Legislative Post Audit Committee conduct a Performance Audit on 911 emergency systems in Kansas. The audit was separated into two parts. Part 1 of the audit concentrated on identifying the then current status of 911 Systems in Kansas. Part 2 was a Performance Audit focused on the federal mandate for wireless E-911 and on the 911 organizational structure in existence in Kansas. The second audit report, published in August, 1999, provides an in-depth review of the following issues: cost recovery, methods of implementation, possible consolidation of PSAPs, possible centralization of 911 functions, standards, and administration, and business practices used by PSAP operators. The report also contains several recommendations, one of which was for the Legislature and Governor to form an E-911 Task Force to study and report on funding, possible legislation, cost recovery and the possibility of a state-wide oversight body to implement wireless E-911.

² Phase I requires wireless carriers to deliver the telephone number of the handset originating a 911 call, and the location of the cell site or base station receiving the 911 call, to the designated PSAP.

³ Phase II requires wireless carriers, in addition to Phase I information, to deliver the physical location of the originating handset to the designated PSAP within specified levels of accuracy.

II. Legislative Directive

Legislation was introduced and passed in the 2000 Legislature requesting that the Governor form and appoint members to a Task Force to determine critical issues surrounding the implementation of wireless E-911.⁴ On June 20, 2000, Governor Graves appointed 14 members to the E-911 Task Force ("Task Force"). The Task Force members represent the wireless and wireline, telephone industry; cities, counties, and the Kansas Relay Center; fire, police and emergency services organizations; the Kansas Highway Patrol, and the Kansas Corporation Commission. The directing legislation, Senate Substitute for House Bill 2945, is included with this Report as Attachment B.

The legislation directs the Task Force to develop a strategy for funding and deploying wireless E-911 services. Specifically, the legislation states that the Task Force will consider the following:

1. The mechanism for administering wireless 911 service, with a focus on whether such service shall be administered on a centralized basis;
2. the possible formation of an oversight board to address future technological, coordination and regulatory issues related to deployment of wireless emergency telephone service;
3. the fairness and adequacy of the mechanism of funding such service;
4. the method, if any, for recovering costs incurred by public safety answering points and by wireless telecommunications service providers in providing emergency telephone service; and,
5. any other issues the task force deems relevant to the deployment of emergency telephone service.⁵

This report addresses the findings and recommendations of the task force with respect to the above directive.

III Process and Approach

The Task Force met as a committee of the whole, once a month, July through November, 2000. One additional sub-committee meeting was held in August. The meetings were well attended, both by Task Force members and other interested parties from the public.

⁴ Senate Substitute for House Bill 2945.

⁵ Senate Substitute for House Bill 2945, Section 1.

A great deal of information was presented to, and by, Task Force members. When members believed the information gathering process was sufficient to permit the decision making process to begin, a report was prepared. This report is the summarization of information and opinions expressed by Task Force members. Some of the conclusions and recommendations contained herein are the result of unanimous, or near unanimous, assent or dissent; however, all recommendations are the result of accepting a majority vote of the members.

There was little disagreement in one of the Task Force's early decisions that it recommend funding for wireless E-911 be obtained by extending to wireless users the existing monthly wireline user fee of up to \$0.75 per user. This recommendation is discussed more in detail later in the report; yet, since it is at the very heart of and underlies many of the recommendations that follow, it needed to be stated early on in the report.

IV Findings, Conclusions and Recommendations

The Task Force presents the findings, conclusions and recommendations drawn from its meetings and makes the following recommendations concerning the topics enumerated in HB 2945.

1. *A mechanism for administering wireless 911 service, with a focus on whether such service shall be administered on a centralized basis.*

The Task Force strongly recommends that administration of wireless E-911 should be integrated with wireline E-911 at the local level. Centralization of this function would not be advantageous. As has been the case with wireline 911 services, the Task Force believes that local problems can best be handled at the local level since most will require customized, local solutions. The current wireline 911 systems have been creatures of counties and local communities and have evolved, grown, and improved, all without the direction of a centralized agency. Specifically, the Task Force enumerates the following justification for this conclusion:

- It is believed that most implementation problems will be encountered at the local level and a "one size fits all" statewide solution, is not appropriate.
- The current wireline systems have all been conceived, implemented, and operated at the local, city or county level. The Task Force believes this method has served all parties well and recommends that wireless be integrated into the present system.

2. *The possible formation of an oversight board to address future technological, coordination and regulatory issues related to deployment of wireless emergency telephone service.*

The majority of the Task Force believes an official, state sponsored, oversight board is unnecessary. Discussion did occur with respect to recommending that an individual or small specialist group, perhaps in the Division of Information and Communications ("DISC"), be designated to assist the counties on matters of technology. Ultimately, this suggestion was

dismissed because it was believed such a group would be required to employ additional personnel and thus increase expenses. Additionally, the Task Force felt that centralized state agencies have a tendency to over-standardize and over-supervise those entities they are supposed to advise. Since counties and localities will be making the difficult decisions, it was believed statewide oversight simply added an additional layer of coordination and decision making that was unnecessary.

Notwithstanding, its recommendation that a *state board of oversight* is unnecessary, the Task Force does believe it would be advantageous to have an entity act as a clearinghouse for information and as an advisor to local governments and PSAP operators on such matters as policy, training and education. However, equipment and technology selection should continue to be made at the local or county level. The Task Force is convinced that different counties will need to select different technologies and equipment to best meet their individual needs. The National Emergency Number Association (NENA) has endorsed the importance of continuing the practice of allowing wireless providers and PSAPs to negotiate the selection of transmission methods that meet the individual requirements of the PSAP and carrier, in each location. As technology changes, the PSAPs and wireless service providers will work together to meet the FCC requirements.

The Task Force recommends that the Kansas Association of Counties with the League of Kansas Municipalities create an advisory group made of representatives from PSAPs, the Association of Public Safety and Communications Officials, National Emergency Number Association wireline and wireless carriers and other private and public entities.

3. *The fairness and adequacy of the mechanism of funding such service.*

The Task Force recommends that the existing wireline funding mechanism for 911 services be extended to fund wireless E-911 services. The choice of a user fee on wireless phones was made after some discussion of various alternatives, such as implementation of additional sales taxes or property taxes. Because cost studies are not yet available, it is not possible to state exactly what the amount of the user fee should be. Therefore, the Task Force suggests that it would be logical and consistent to apply the same cap amount as is currently applied for wireline services (i.e., up to \$0.75 per user). The Task Force also suggests that it is acceptable for the governing jurisdictions of PSAPs to merge the user fee revenues for wireline, and wireless customers into a single fund, with separated accounting of wireline and wireless revenues and costs. Any changes made to the wireless user fee rate should be handled in the same manner as the required or statutory process for the wireline user fee

The Task Force recommends this user fee on wireless E-911 service for the following reasons:

- A fee on wireless users is a logical choice since wireless calls now make up to 50% of the 911 calls in some jurisdictions.
 - Wireless users now receive Basic 911 service with E-911 coming in the near future but are not contributing to the PSAP's incremental cost of serving them.
 - Most states that have started funding for wireless E-911 have selected the user fee as the source of funding.
 - The user fee meets the desirable characteristics of providing a stable source of revenue that is easy to understand and administer and also treats payers equitably. By providing a range of up to \$0.75, it is flexible and can be changed as local circumstances warrant.
4. *The method, if any, for recovering costs incurred by public safety answering points and by wireless telecommunications service providers in providing emergency telephone service.*

It is generally accepted that the PSAPs could recover all incremental cost for providing Phase I and Phase II E-911 service. It is also generally assumed that the Local Exchange Carriers ("LECs") will recover their cost through tariffs or contracts; in fact, Southwestern Bell already has tariffs on file at the KCC. However, the issue that motivated much discussion was whether the wireless providers should be able to share in the proceeds of the wireless user fee to recover their cost. The Task Force now suggests that any incremental costs incurred as a result of a federal mandate to private sector companies (wireless service providers are not regulated) should be eligible for cost recovery. The Task Force recommends that wireless providers can either bill their end user customers and can negotiate recovery of their costs with the individual PSAPs. For wireline LECs those rates for services are set by tariffs or by individual contracts. For wireless carriers those rates can be determined by negotiations with each PSAP.

The Task Force recommends:

- Wireless providers should collect a user fee and remit the proceeds to the appropriate governing jurisdiction of the PSAP (similar to the process currently used by wireline LECs). The provider is permitted to retain up to 2% of the collected user fee to offset billing, collection and remittance expenses.
- The fee will be distributed to the local governing jurisdiction, in accordance with the Federal Mobile Telecommunications Sourcing Act⁶.
- The fee will be assessed within the governing jurisdiction of the PSAPs.
- The governing jurisdiction of the local PSAP will administer the 911 funds.
- The wireless carriers can negotiate recovery of their costs with the individual PSAPs.

The following 911 system costs are eligible for cost recovery by wireless providers (through negotiated contracts): incremental costs for designing, upgrading, purchasing, leasing, programming, installing, testing or maintaining all data bases, hardware, and software components.

⁶ The *Mobile Telecommunications Sourcing Act*, PL 106-252 (HR 4391), enacted July 28, 2000.

The following items are eligible for cost recovery by PSAPs: incremental costs for lease, purchase, and maintenance of equipment and telephone company charges necessary to the 911 system, including; computer and software expenses, data base provisioning expenses, start up costs for 911 systems, capital improvements required for 911 systems, and road signs related to emergency services. Capital improvement expenditures include any costs for the repair, restoration, and construction of public facilities directly related to local emergency communications services. PSAP cost recovery methods for wireless 911 system costs, should be the same as presently followed for wireline 911 system costs.

The Task Force specifically recommends that expenses for 911 personnel, office supplies, furniture and cell phones for PSAP staff not be eligible for reimbursement.

Whether or not, the Legislature accepts the Task Force's recommendation cost recovery method, or develops or accepts another alternative, it is reminded that Phase II cannot be implemented until a cost recovery mechanism is in place for the PSAPs and wireless phone providers.

5. Other issues the task force deems relevant to the deployment of emergency services.

Not all items fit neatly into the above four categories. The Task Force discussed several other issues. Following is a summary of those additional topics and

A. Centralization of 911 Operations

The Kansas Highway Patrol ("KHP") shared its centralization experience with the Task Force. As the KHP centralized dispatch functions in Salina most of the advantages sought by centralization were realized. However, some unexpected drawbacks have occurred and created some concern. The Task Force weighed the pros and cons of centralization, as related to 911 systems and decided it could not recommend centralizing the PSAP functions in Kansas to one, or even, a few locations. The KHP experience demonstrates that such a transition can be accomplished, but the Task Force believes, the time is not yet ripe to do so with 911 emergency services.

E-911 for wireline services were taken on by the local governing jurisdictions as the citizens saw the need for such services in their community. Of the 105 counties in the state, 2 still have not seen sufficient evidence of a need to compel these two counties to provide basic 911 services. As their citizens ask for wireless phone E-911 services, the local governing officials will work to implement a system that fits the needs of their community.

B. Consolidation of PSAPs

Having decided that statewide centralization of PSAP functions is not needed, the Task Force nevertheless suggests that there is potential for partnering among some PSAPs in the provision of wireless E-911. The Task Force did not review which PSAPs might be good candidates for partnering. However, it has been indicated that the Kansas Association of Counties and the League of Kansas Municipalities will become active in providing assistance to the local governing jurisdictions and PSAPs. Additionally these entities will study the benefits of regional partnerships. Any study, or project of partnering among the PSAPs will necessarily be complex as there are many stakeholders.

C. Start-up Funds for Phase II Costs

The Task Force suggests most of the benefits of a start-up fund can be attained simply by having the local authorities determine how much funding is needed and then collect and hold their own monies. This is presently being done by many PSAPs in an attempt to either provide funds to improve and upgrade existing systems or to prepare for the advent of wireless E-911.

D. Deployment of Wireless E-911 Systems

The Task Force suggests that no particular statewide plan is required for the deployment and installation of wireless E-911 systems. It was thought, that deployment will follow naturally after requests from PSAPs were made to the wireless carriers for the provision of enhanced service. Deployment will very likely take place in the larger counties first, with the smaller counties coming later. However, there is no need to plan in advance for which county is first, second, third, etc., as each conversion is independent of the others.

E. Cost Study

The lack of adequate information concerning startup costs for the wireless providers and PSAPs prevents the Task Force from making a specific recommendation regarding the cost of implementing wireless E-911 services. However, the Task Force suggests that knowledge of the cost of implementation is not needed in order for the Legislature to adopt legislation attaching the current 911 user fee to wireless phones. Adequate cost information for Phase II will be available as the first local governing jurisdictions begin to work with the wireless providers to startup E-911 wireless services. The wireless providers and PSAPs will come to an understanding regarding costs as they negotiate contracts for the provision of services and it is suggested that the current wireline user fee will be sufficient to cover any cost negotiated by these entities.

F. Liability Waivers

The Task Force recommends that the following language be adopted to address proprietary information concerns: "Notwithstanding other provisions of law, in no event shall any wireless service provider, its officers, employees, assigns or agents, be liable for any form of civil damages or criminal liability which directly or indirectly result from, or is caused by, an act or omission in

the development, design, installation, operation, maintenance, performance or provision of 911 service or other emergency wireless two- and three-digit wireless numbers, unless said acts or omissions constitute gross negligence, recklessness or intentional misconduct. Nor shall any wireless service provider, its officers, employees, assigns, or agents be liable for any form of civil damages or criminal liability which directly or indirectly result from, or is caused by, the release of subscriber information to any governmental entity as required under the provisions of statute, unless the release constitutes gross negligence, recklessness or intentional misconduct." This language is incorporated in other State's statutes.

G. Use of Proprietary Information

The Task Force recommends that the following language be adopted to address proprietary information concerns: "Notwithstanding any other provisions of law, no proprietary information submitted pursuant to this section shall be subject to subpoena or otherwise released to any person other than to the submitting wireless service provider, without the express permission of said wireless service provider. General information collected pursuant to this section shall only be released or published in aggregated amounts which do not identify or allow identification of numbers of subscribes or revenues attributable to an individual wireless service provider." This language is incorporated in other State's statutes.

H. Services for Hearing-Impaired and Speech-Impaired Individuals

The Task Force recognizes that dialing 9-1-1 is the most familiar and effective way Americans have of finding help in an emergency. The Task Force also recognizes that people with hearing and/or speech disabilities utilize both wireline and wireless technologies to call 9-1-1 via their teletypewriters (TTYs), which are also known as "telecommunications devices for the deaf (TDDs)". The information the Task Force received raised concerns among the members that there is a lack of comprehensive and standardized training in the state of Kansas on effectively recognizing and communicating with callers who use wireline and wireless TTYs/TDDs.

A TTY is a device that is used in conjunction with a telephone to communicate with persons who are deaf, hard of hearing, or speech impaired, by typing and reading text. To communicate by TTY, a person types his or her conversation, which is read on a TTY display by the person who receives the call. Both parties must have TTYs to communicate. When typing on a TTY, each letter is transmitted by an electronic code called Baudot, which is sent from the TTY on the sending end of the call through the telephone line in the form of tones to the TTY on the receiving end of the call, the same way voiced communications occur between two parties. The receiving TTY transforms the tones back to letters on a small display screen. Wireless TTY communications work the same way as the wireline communications, except that wireless calls experience a noticeable delay in connecting and transmitting of signals due to the time it takes to send/process the codes through the towers. This delay is much more noticeable in wireless TTY communications.

Communication between two persons using standard TTYs can only occur in one direction at a time. Thus, both persons who are conversing cannot type to each other at the same time; they

must take turns sending and receiving. A person sending a communication by TTY indicates that he or she has finished transmitting by typing the letters "GA," which stand for "go ahead."

The Americans with Disabilities Act (ADA) requires all Public Safety Answering Points (PSAPs) to provide direct, equal access to their services for people with disabilities who use teletypewriters (TTYs). Title II of the ADA covers telephone emergency service providers and other State and local government entities and instrumentalities. The United States Department of Justice's regulation is published at 28 C.F.R. Part 35.

The ADA regulation requires 9-1-1 or other telephone emergency service providers to provide TTY users with direct access; and an opportunity to benefit from the emergency services that is equal to the opportunity afforded others. Direct, equal access requires PSAPs to have the appropriate equipment to communicate with people who use TTYs. It also requires them to use the proper procedures and practices when TTY calls are received. In addition, direct, equal access for TTY calls requires that PSAPs use effective procedures for recognizing and responding to TTY calls.

After TTY calls are recognized, call takers must effectively communicate with callers during the calls. Effective communication by TTY will require call takers to be familiar with the use of TTY equipment and TTY protocols. PSAPs must train their call takers to effectively recognize and process TTY calls. Call takers must be trained in the use of TTY equipment and supplied with information about communication protocol with individuals who are deaf or hard of hearing, or have speech impairments. For instance, callers who use American Sign Language may use a syntax that is different from spoken English. In addition, in TTY communication, certain accepted abbreviations are frequently used.

Telephone relay services, such as the Kansas Relay Center, for example, are provided by States, as required by Title IV of the ADA, and are regulated by the Federal Communications Commission. Relay services involve a communications assistant who uses both a standard telephone and a TTY to type voice communication to a TTY user and read a TTY user's typed communication to a voice telephone user. Telephone relay services are not as effective for emergencies because the process is far more time-consuming than calls between two TTYs.

The ADA does not specify how call takers must be trained, but the Department of Justice believes that for essential proper training, it should be mandatory for all personnel who may have contact with individuals from the public who are deaf, hard of hearing, or speech impaired. PSAPs should require or offer refresher training at least as often as they require or offer training for voice calls, but at a minimum, every six months.

Comprehensive training should include:

- Information about the requirements of the ADA and Section 504 of the Rehabilitation Act for telephone emergency providers;
- Information about communication issues regarding individuals who are deaf or hard of hearing, or speech impaired, including information about American Sign Language;
- Practical instruction on identifying and processing TTY calls, including the importance of recognizing silent calls as a TTY call, using proper syntax, abbreviations, and protocol when responding to TTY calls and relayed calls; and
- Hands-on experience in TTY communications, especially for new call takers, as part of their initial training orientation. Wireless TTY communications should also be an integral part of this training orientation.

The Department of Justice believes that frequent testing is essential to ensure direct, equal access. Testing call takers and their equipment is also one of the most effective ways to ensure compliance with the ADA's requirement that accessibility features are maintained in operable working condition. The tests should be designed to ascertain whether TTY equipment functions properly and whether personnel have been adequately trained to recognize TTY calls quickly, to operate TTY equipment, and to conduct TTY conversations. These tests should be unannounced.

The Task Force recognizes that in order for PSAPs to deliver direct, equal access to persons who are deaf, hard of hearing, or who have speech impairments, they must utilize trainers who have expertise in hearing and speech impairments. These trainers must be familiar with the different PSAP structures and how 9-1-1 calls are handled. These trainers will provide accurate, quality training in the area of communications accessibility, especially where wireless TTY technology is concerned.

The Task Force specifically recommends that PSAPs be allowed to recover their costs of providing this specialized training from the proposed funding mechanism.

V Affected Statutes

During its discussions the Task Force identified the following statutes as being impacted by the various recommendations made here in:

K.S.A. 12-5302 – Additional language is required which will authorize local authorities to assess a wireless users fee for 911 services of up to a maximum of \$0.75 per month. This statute would also need new, express language permitting the use of wireline user fees to be spent for either wireline or wireless costs, and vice versa.

K.S.A. 12-5303 – Additional language is required authorizing wireless companies to collect the user fee imposed by the governing bodies, in accordance with the Federal Mobile Telecommunications Sourcing Act. Wireless providers should be permitted to keep 2% of the user fees collected to cover administrative cost and the rest should be remitted to the local governing body.

K.S.A. 12-5304 – The current language concerning what costs are eligible for reimbursement should be clarified. The section dealing with capital improvements and physical enhancements seems overly broad, and more specificity is required. The current language should be amended, so that it is clear that, engineering, architectural, and construction costs associated with 911 emergency systems fall under the category of capital improvements.. In addition, language should be added so as to include training expenses for PASP personnel.

K.S.A 12-5308 -- The current language should be amended to ensure it provides a commensurate level of protection from liability for wireless carriers, as that enjoyed by wireline carriers. This would make it conform with federal law, enacted in 1999.

E911 Task Force
Membership

Nelson Krueger, Western Wireless, Lawrence, Chair

Susan Sherwood, Sprint, Fairway, Vice-Chair

Members:

Roger Bales, Kansas Consolidated Professional Resources, Topeka

Frank Balestrere, Southwestern Bell Telephone, Topeka

R. Keith Faddis, Deputy Chief of Police, Overland Park

J. Patrick Lawless, Mayor, Osage City

Tomas A. Sullivan, Barton County Administrator, Great Bend

William Butler, County Commissioner, Miami County

David Rosenthal, Southwestern Bell, Relay Center, Lawrence

David Lake, Emergency Medical Services, Topeka

Lisa Durand, Chief of Johnson County Emergency Center

Alvan Johnson, Riley County Police Department, Manhattan

Col. Don Brownlee, Kansas Highway Patrol, Topeka

Dan Myers/Guy McDonald, Kansas Corporation Commission, Topeka

Support/Resource Members:

Janet Buchanan, Kansas Corporation Commission, Topeka

Cindy Lash, Legislative Division of Post Audit, Topeka

Mary Torrence, Revisor of Statutes Office, Topeka

Session of 2000
Effective: April 27, 2000

SENATE Substitute for HOUSE BILL No. 2945

An Act relating to telecommunications services;
establishing the enhanced 911 task force.

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

Section 1. (a) There is hereby established an enhanced 911 task force which shall develop a strategy for funding and deploying wireless emergency telephone services. Such plan shall include suggestions for future action by the legislature with respect to deploying efficient and economical enhanced 911 services and implementing equitable and adequate means to fund such services. Specifically, the task force shall make recommendations and propose legislation, if appropriate, concerning the following:

- (1) The mechanism for administering wireless 911 service, with a focus on whether such service shall be administered on a centralized basis;
- (2) the possible formation of an oversight board to address future technological, coordination and regulatory issues related to deployment of wireless emergency telephone service;
- (3) the fairness and adequacy of the mechanism for funding such service;
- (4) the method, if any, for recovering costs incurred by public safety answering points and by wireless telecommunications service providers in providing emergency telephone service; and
- (5) any other issues the task force deems relevant to the deployment of emergency telephone service.

(b) The task force shall consist of 14 members. Two members shall be representatives of wireless telecommunications carriers to be appointed by the governor. The remainder of the task force shall be appointed as follows: One member representing a local exchange carrier other than a rural telephone company and one member representing a rural telephone company who shall be recommended by the Kansas telecommunications industry association. Two members shall be recommended by the Kansas association of counties and two members shall be recommended by the league of Kansas municipalities. One member shall be a person with a communication disability recommended by the Kansas commission for the deaf and hard of hearing. One member shall be recommended by the Kansas emergency medical services board. One member shall be recommended by the Kansas association of fire chiefs. One member shall be recommended by the Kansas association of chiefs of police. The names of the recommended members shall be

transmitted to the governor for final approval. No such recommended member shall serve unless approved by the governor. The remaining members of the task force shall include: The superintendent of the highway patrol or the superintendent's designee; the chair of the state corporation commission or the chair's designee. The governor shall designate one member as chair of the task force. All meetings shall be on call of the chair. All task force members shall serve without compensation.

(c) The task force shall report its findings and conclusion to the house committee on utilities and the senate committee on commerce during the first week of the 2001 legislative session. The state corporation commission shall provide staff support to the task force as necessary. Such staff shall prepare the report and any legislation recommended by the task force.

(d) The task force shall be and is hereby abolished on July 1, 2001.

Sec. 2. This act shall take effect and be in force from and after its publication in the Kansas register.