

MINUTES OF THE SENATE UTILITIES COMMITTEE

The meeting was called to order by Chairman Pat Apple at 1:30 p.m. on February 11, 2009, in Room 545-N of the Capitol.

All members were present except:

Senator Marci Francisco - excused

Senator Janis Lee - excused

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:

Others attending:

See attached list.

Approval of Minutes

Moved by Senator Bruce, seconded by Senator Masterson, approve the minutes of the meetings of the Senate Utilities Committee held on January 26, 2009; January 29, 2009; February 2, 2009; February 3, 2009; and February 4, 2009. Motion carried.

Chair opened for discussion and possible action on:

**SB 48 - Enhanced wireless and VoIP 911 service amendments, collection and disbursement of certain funds.**

Mike Corrigan, Office of Revisor of Statutes, provided a draft of the Proposed **Substitute for S.B. 48** and explained the proposed changes in language. (Attachment 1)

Moved by Senator Brownlee, seconded by Senator Taddiken, to adopt the proposed **Substitute for S.B. 48**. Motion carried.

Moved by Senator Emler, seconded by Senator Masterson, adopt the language in **Substitute for S.B. 48** on appointment of joint committee in New Sec. 6 (a) and in New Sec. 6 (b)(2) to change 9-1-1 to 911. Motion carried.

Moved by Senator Brownlee, seconded by Senator Petersen, in **Substitute for S.B. 48**, New Sec. 6. (b) (5) to change the word "systems" to "statutory requirement". Motion carried.

Moved by Senator Bruce, seconded by Senator Taddiken, in **Substitute for S.B. 48**, New Sec. 6 (f) to add "and a representative of the Kansas Corporation Commission" after post audit. Motion carried..

Some discussion on "primary place of use" rather than "primary residence". This matter was tabled for interim study.

Moved by Senator Emler, seconded by Senator Taddiken, adopt amendments to **Substitute for S.B. 48**. Motion carried.

Moved by Senator Brownlee, seconded by Senator Petersen, move **Substitute for S.B. 48** out as amended. Motion carried..

CONTINUATION SHEET

Minutes of the Senate Utilities Committee at 1:30 p.m. on February 11, 2009, in Room 545-N of the Capitol.

Chair opened for discussion and possible action on  
**SB 58 - Underground utility damage prevention act, amending tolerance zone definition.**

Leo Haynos, KCC, reported on the meeting with conferees of **SB 58** in an effort to reach consensus on the various amendments offered by Kansas One Call. He summarized the results of their meeting and explained the alternative proposals being offered for the review of the Senate Utilities Committee. (Attachment 2)

Moved by Senator Taddiken, seconded by Senator Petersen, in S.B. 58 to approve the change of date to 2010. Motion carried.

Moved by Senator Bruce, seconded by Senator Brownlee, for S.B. 58 to adopt the proposal as set forth in Attachment 1 of the KCC testimony regarding the Open Records Act and drafted in balloon by the Revisor. Motion carried (Attachment 3)

Moved by Senator Emler, seconded by Senator Reitz, for S.B. 58 adopt the balloon prepared by the Revisor regarding the change in Tier 3. Motion carried. (Attachment 4)

Moved by Senator Brownlee, seconded by Senator Emler, adopt as **Substitute for S.B. 58** and pass out favorably as amended. Motion carried.

The next meeting is scheduled for February 12, 2009.

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

Respectfully submitted,

Ann McMorris  
Committee Assistant

Attachments - 4

GUEST LIST  
SENATE UTILITIES COMMITTEE  
FEBRUARY 11, 2009

<u>NAME</u>	<u>COMPANY</u>
Leo Haynos	KCC
Tom Shimon	Kansas One Call
Mike Reecht	Sprint
Dawn Jester	One Call Concepts
George Melling	KANSAS GAS SERVICE
LOU STANTON	NORTHERN NATURAL GAS
Nelson Krueger	PAR Electric
Jacquie Stinson	USC
Darci Mease	Western One
Elmer Rumbaum	Ks Rural Water Assoc.
Mike Murray	Embury
Wes Ashton	Black Hills Energy
Derck Helm	Helm Law Firm
Mari Tucker	Dept of Commerce
Dave Holiba	KCC
JK Ransom	Perseid
Barb Hinton	Post Audit
Kari Prestey	Kearney & Assoc.
Shirley Allen	K R I T C

GUEST LIST  
SENATE UTILITIES COMMITTEE  
FEBRUARY 11, 2009

NAME

COMPANY

Mark Schreiber	Westar
TEM LAY	KCC
Dina Fisk	Verizon



## Proposed Substitute for SENATE BILL NO. 48

By Committee on Utilities

AN ACT concerning telecommunications; relating to enhanced wireless 911 service; concerning certain fees and disposition thereof; relating to audits of certain systems; establishing the joint committee on enhanced and next generation 911; definitions; amending K.S.A. 2008 Supp. 12-5322, 12-5323, 12-5334, 12-5338 and 12-5361 and repealing the existing sections.

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

Sec. 1. K.S.A. 2008 Supp. 12-5322 is hereby amended to read as follows: 12-5322. As used in the wireless enhanced 911 act, unless the context otherwise requires:

(a) "Advisory board" means the wireless enhanced 911 advisory board established under K.S.A. 2008 Supp. 12-5326, and amendments thereto.

(b) "Automatic number identification" means a feature by which a person calling a public safety answering point has such person's 10-digit telephone number simultaneously forwarded to the public safety answering point and to the public safety answering point's display and transfer.

(c) "Eligible municipality" means: (1) Any county having a population of less than ~~75,000~~ 85,000 or any city located within such a county; or (2) any two or more such counties or cities.

(d) "Emergency telephone service" means a telephone system utilizing a single three digit number "911" for reporting police, fire, medical or other emergency situations.

(e) "Enhanced 911 service" means an emergency telephone service that generally may provide, but is not limited to,

selective routing, automatic number identification and automatic location identification features.

(f) "Exchange access facilities" means all facilities provided by the service supplier for the facility which provides local telephone exchange access to a service user.

(g) "Fund" means the wireless enhanced 911 grant fund established by this act.

(h) "Governing body" means the board of county commissioners of a county or the governing body of a city.

(i) "Local collection point administrator" means the statewide association of cities as established by K.S.A. 12-1610e, and amendments thereto, and the statewide association of counties as established by K.S.A. 19-2690, and amendments thereto.

(j) "Mobile telephone number" means the telephone number assigned to a wireless telephone at the time of initial activation.

(k) "Person" means any individual, firm, partnership, copartnership, joint venture, association, cooperative organization, corporation, municipal or private, and whether organized for profit or not, state, county, political subdivision, state department, commission, board, bureau or fraternal organization, nonprofit organization, estate, trust, business or common law trust, receiver, assignee for the benefit of creditors, trustee or trustee in bankruptcy or any other legal entity.

(l) "Prepaid wireless telephone service" means wireless telephone service that is activated in advance by payment for a finite dollar amount of service or for a finite set of minutes that terminate either upon use by a customer and delivery by the wireless provider of an agreed-upon amount of service corresponding to the total dollar amount paid in advance or within a certain period of time following the initial purchase or activation, unless additional payments are made.

(m) "Primary place of use" has the meaning provided in the mobile telecommunications act (4 U.S.C. 116, et seq., as in effect on the effective date of this act).

(n) "Project" means the development and acquisition of the necessary improvements in order to facilitate the establishment of wireless enhanced 911 service.

(o) "Project costs" means all costs or expenses which are necessary or incident to a project and which are directly attributable thereto.

(p) "PSAP" means public safety answering point.

(q) "Pseudo-automatic number identification" means a feature by which automatic number identification is provided to a public safety answering point of the 10-digit telephone number of the specific cell site or cell site sector from which a wireless call originated.

(r) "Public agency" means any city, county, municipal corporation, public district or public authority located in whole or in part within this state which provides or has authority to

provide fire fighting, law enforcement, ambulance, emergency medical or other emergency services.

(s) "Secretary" means the secretary of administration.

(t) "Service supplier" means any person providing exchange telephone service to any service user in this state.

(u) "Service user" means any person who is provided exchange telephone service or wireless service in this state.

(v) "Subscriber account" means the 10-digit access number assigned to a wireless service customer regardless of whether more than one such number is aggregated for the purpose of billing a service user.

(w) "Tariff rate" means the rate or rates billed by a service supplier and as stated in the service supplier's tariffs, approved by the state corporation commission which represent the service supplier's recurring charges for exchange access facilities or their equivalent, exclusive of all taxes, fees, licenses or similar charges whatsoever.

(x) "Valid request" means a request to a wireless carrier for wireless enhanced 911 service, made by a PSAP which is capable of receiving and utilizing the data elements associated with wireless enhanced 911 service as determined in accordance with 47 CFR 20.18 (October 1, 2002).

(y) "Wholesaler of prepaid wireless service" means a person who purchases at wholesale wireless service from a wireless carrier for resale as prepaid wireless service.

(z) "Wireless automatic location identification information"

means a feature by which information is provided to a public safety answering point identifying the location of a 911 caller within the parameters established by the federal communications commission.

(aa) "Wireless carrier" means any common, private or other radio carrier licensed by the federal communications commission to provide two-way voice service in this state which provides interconnection to the public switched telephone network and access to a 24-hour answering point.

(bb) "Wireless enhanced 911 grant fee" means the fee imposed under K.S.A. 2008 Supp. 12-5324, and amendments thereto.

(cc) "Wireless enhanced 911 local fee" means the fee imposed under K.S.A. 2008 Supp. 12-5330, and amendments thereto.

(dd) "Wireless enhanced 911 service" means a communication service by which wireless carriers can provide automatic number identification, pseudo-automatic number identification and wireless automatic location identification information to a requesting PSAP, as defined in FCC docket 94-102, which is capable of receiving and utilizing the data elements associated with wireless enhanced 911 service.

(ee) "Wireless service" means a two-way voice service provided by a wireless carrier.

Sec. 2. K.S.A. 2008 Supp. 12-5323 is hereby amended to read as follows: 12-5323. (a) There is hereby established in the state treasury the wireless enhanced 911 grant fund.

(b) Moneys from the following sources shall be credited to

1-5



the fund:

(1) Amounts received by the state from the federal government for the purposes of the fund;

(2) amounts appropriated or otherwise made available by the legislature for the purposes of the fund;

(3) amounts received from fees under K.S.A. 2008 Supp. 12-5324 or 12-5356, and amendments thereto, or from repayments or fees remitted under K.S.A. 2008 Supp. 12-5328, 12-5330 or 12-5356, and amendments thereto;

(4) interest attributable to investment of moneys in the fund; and

(5) amounts received from any public or private entity for the purposes of the fund.

(c) Subject to the conditions and in accordance with requirements of this act, moneys credited to the fund shall be used only:

(1) To pay costs of administering the fund, including actual and necessary expenses incurred by members of the advisory board while performing duties required by the wireless enhanced 911 act and costs of any audit performed under K.S.A. 2008 Supp. 12-5331, and amendments thereto, but the aggregate amount of all such costs shall not exceed 5% of the moneys credited to the fund; and

(2) to provide grants to eligible municipalities only for necessary and reasonable costs incurred or to be incurred by PSAP's for: (A) Implementation of wireless enhanced 911 service and VoIP 911 service, as defined in K.S.A. 2008 Supp. 12-5353,

and amendments thereto; (B) purchase of equipment and upgrades and modification to equipment used solely to process the data elements of wireless enhanced 911 service and VoIP 911 service, as defined in K.S.A. 2008 Supp. 12-5353, and amendments thereto; and (C) maintenance and license fees for such equipment and training of personnel to operate such equipment, including costs of training PSAP personnel to provide effective service to all users of the emergency telephone system who have communications disabilities. Such costs shall not include expenditures to lease, construct, expand, acquire, remodel, renovate, repair, furnish or make improvements to buildings or similar facilities or for other capital outlay or equipment not expressly authorized by this act; and

(3) to pay expenses of the joint committee on enhanced and next generation 911 established pursuant to new section 6, and amendments thereto.

(d) On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the fund interest earnings based on:

(1) The average daily balance of moneys in the wireless enhanced 911 grant fund for the preceding month; and

(2) the net earnings rate of the pooled money investment portfolio for the preceding month.

(e) All payments and disbursements from the fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers

approved by the secretary or by a person or persons designated by the secretary.

Sec. 3. K.S.A. 2008 Supp. 12-5334 is hereby amended to read as follows: 12-5334. ~~{a} During calendar year 2006, the division of post-audit shall conduct an audit of the wireless enhanced 911 service system to determine: (1) Whether moneys received by municipalities pursuant to the wireless enhanced 911 act are being used appropriately; (2) the amount of moneys collected pursuant to this act is adequate; (3) the status of wireless enhanced 911 implementation; and (4) the need and level of continued funding of the wireless enhanced 911 service system. The audit shall be in accordance with a scope statement authorized and approved by the legislative post-audit committee and shall be conducted in accordance with article 11 of chapter 46 of the Kansas Statutes Annotated, and amendments thereto.~~

{b} During the calendar year 2008, the division of post audit shall conduct an audit of the wireless enhanced 911 service system, the VoIP enhanced 911 service system, as defined in K.S.A. 2008 Supp. 12-5353, and amendments thereto, and the landline emergency telephone service system to determine: (1) Whether moneys received by municipalities pursuant to the wireless enhanced 911 act and the VoIP enhanced 911 act are being used appropriately; (2) the amount of moneys collected pursuant to this act and the VoIP enhanced 911 act is adequate; (3) the status of wireless enhanced 911 and VoIP enhanced 911 implementation; and (4) the need and level of continued funding

of the wireless enhanced 911 service system, the VoIP enhanced 911 service system and the landline emergency telephone service system. The audit shall be in accordance with a scope statement authorized and approved by the legislative post audit committee and shall be conducted in accordance with article 11 of chapter 46 of the Kansas Statutes Annotated, and amendments thereto. The audit report shall be submitted to the legislature at the commencement of the regular session of the legislature in 2009.

Sec. 4. K.S.A. 2008 Supp. 12-5338 is hereby amended to read as follows: 12-5338. (a) On July 1, ~~2010~~ 2011:

(1) The wireless enhanced 911 grant fee shall be discontinued, the advisory board shall be abolished, any unobligated balance of the wireless enhanced 911 grant fund shall be paid to the local collection point administrator for distribution to PSAP's based on the population of the municipality or municipalities served by the respective PSAP and the fund shall be abolished.

(2) Within any county which has a population of 125,000 or more, the amount of the tax imposed pursuant to K.S.A. 12-5302, and amendments thereto, shall not exceed \$.25 per month per access line or its equivalent and the amount of the wireless enhanced 911 local fee within such jurisdiction shall be an equal amount per month per wireless subscriber account.

(3) Within any county which has a population of less than 125,000 the amount of the tax imposed to K.S.A. 12-5302, and amendments thereto, shall not exceed \$.50 per month per access

line or its equivalent and the amount of the wireless enhanced 911 local fee shall be an equal amount per month per wireless subscriber account.

(4) The provisions of K.S.A. 2008 Supp. 12-5323 through 12-5329, and amendments thereto, shall expire.

(b) On and after July 1, ~~2010~~ 2011, the proceeds of the wireless enhanced 911 local fee shall be used only to pay for costs of emergency telephone service described in K.S.A. 12-5304, and amendments thereto, and expenditures authorized by K.S.A. 2008 Supp. 12-5330, and amendments thereto.

Sec. 5. K.S.A. 2008 Supp. 12-5361 is hereby amended to read as follows: 12-5361. (a) On July 1, ~~2010~~ 2011:

(1) The VoIP enhanced 911 grant fee shall be discontinued.

(2) The amount of the tax per access line or its equivalent imposed within a jurisdiction pursuant to K.S.A. 12-5302, and amendments thereto, and the amount of the VoIP enhanced 911 local fee per VoIP subscriber whose primary residence is within such jurisdiction shall be an equal amount per month.

(3) The provisions of K.S.A. 2008 Supp. 12-5354 and 12-5355, and amendments thereto, shall expire.

(b) On and after July 1, ~~2010~~ 2011, the proceeds of the VoIP local fee shall be used only to pay for costs of emergency telephone service described in K.S.A. 12-5304, and amendments thereto, and expenditures authorized by K.S.A. 2008 Supp. 12-5330, and amendments thereto.

New Sec. 6. (a) There is hereby established the joint



committee on enhanced and next generation 911 which shall be composed of six members of the senate and six members of the house of representatives. Two of the senate members shall be appointed by the president of the senate, one of the senate members shall be appointed by the minority leader of the senate. Two of the representative members shall be appointed by the speaker of the house of representatives, one representative member shall be appointed by the minority leader of the house of representatives. The president of the senate shall appoint the chairperson, vice-chairperson and ranking minority member of the senate committee on utilities as members of the joint committee. The speaker of the house of representatives shall appoint the chairperson, vice-chairperson and ranking minority member of the house of representatives committee on energy and utilities as members of the joint committee. The president of the senate shall designate a senate member to be chairperson of the joint committee. The speaker of the house of representatives shall designate a representative member to be vice-chairperson of the joint committee. If a vacancy occurs in the office of any member of the joint committee a successor shall be appointed in the same manner as the original appointment for the remainder of the term.

(b) The joint committee shall make recommendations concerning the following:

(1) Issues concerning methods to address changing technology in deploying emergency communications systems;

(2) addressing the fairness and adequacy of funding for

emergency communications systems in different areas of the state;

(3) deployment and use of next generation 9-1-1 (NG9-1-1) technology and coordination of efforts in the state concerning such deployment and use;

(4) the amount of funding needed to provide for quality emergency communications service in the state;

(5) examining the possibility of combining wireline and wireless emergency communications systems and whether there should be parity in funding between wireline and wireless systems;

(6) benefits to be gained by consolidation of public service answering points with a focus on examining effects on cost and service of such consolidation;

(7) the method, if any, for recovering costs incurred by public service answering points and by wireless and other service providers in providing emergency communications systems;

(8) whether emergency communications services should be administered on a more centralized basis; and

(9) any other issues the joint committee deems relevant to the deployment of emergency communications systems.

(c) The joint committee shall report its findings and conclusions to the house committee on energy and utilities and senate committee on utilities, including any recommendations concerning legislative changes during the first week of the 2010 legislative session.

(d) Members of the joint committee attending meetings

authorized by the joint committee shall be paid amounts for expenses, mileage and subsistence as provided in subsection (e) of K.S.A. 75-3223, and amendments thereto. Expenses for the joint committee shall be paid from the wireless enhanced 911 grant fund.

(e) The joint committee may meet on the call of the chairperson. A quorum of the joint committee shall be seven members. All actions of the joint committee shall be by motion adopted by a majority of those voting members present when there is a quorum.

(f) The staff of the office of revisor of statutes, the legislative research department, the division of legislative administrative services and the division of post audit shall provide such assistance as may be requested by the joint committee.

(g) The joint committee shall be and is hereby abolished on December 1, 2010.

(h) As used in this section, "joint committee" means the joint committee on enhanced and next generation 911.

Sec. 7. K.S.A. 2008 Supp. 12-5322, 12-5323, 12-5334, 12-5338 and 12-5361 are hereby repealed.

Sec. 8. This act shall take effect and be in force from and after its publication in the Kansas register.



*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 11, 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 Staff. At your request, the KCC Staff met with the conferees of this bill in an effort to reach consensus on the various amendments that were offered in the testimony of Kansas One Call given to this committee on February 4, 2009. My comments today are a summation of the results of our meeting, and I have attached alternative proposals that were discussed by the group for your review.

Seven conferees met to discuss the amendments. The associations represented are as follows:

Kansas Corporation Commission Staff	Kansas Rural Water Association
Johnson County Water One	the City of Olathe
Shawnee RWD 8	Kansas One Call
Kansas Gas Service	

After a short discussion, this group as a whole came to the conclusion that implementing the provisions of HB 2637 that were approved by the 2008 legislature will be costly and difficult. In fact, we believe the benefits gained through the use of a complicated tier system will be outweighed by the costs and confusion that we foresee in implementing the amendments to the statute. Therefore, the first proposal respectfully suggested for your consideration is to rescind the portion of HB 2637 that deals with KUUDPA and allow the law to remain at the status quo.

Senate Utilities Committee  
February 11, 2009  
Attachment 2-1

In the alternative, the group agreed to three additional terms which may help with the implementation of HB 2637. A fourth alternative that is a proposal from KCC Staff and was not fully vetted by the group of conferees is included in this report.

First of all, the group of conferees supports the technical correction to the definition of tolerance zone, as proposed in SB 58, and the proposal to make the effective date of all the changes made to the KUUDPA by SB 58 and HB 2637 to be January 1, 2010. Because the majority of the changes made by HB 2637 are scheduled to go into effect in July 2009, a postponement by six months is not expected to affect municipal government's ability to budget for any additional costs. Implementing the changes in January also gives the KCC and the regulated community the ability to make adjustments to requirements during a period of the year when there is a low demand for excavation activity. Hopefully, this timing will reduce the amount of miscommunication that may occur during implementation of the changes.

The second amendment discussed removal of the provisions from HB 2637 that make Kansas One Call a public agency subject to KORA and KOMA. As presented in testimony, Kansas One Call is a private non profit corporation that is controlled by its members through a board of directors elected from the membership. As such, they do not believe they should be considered a public agency nor be exposed to the costs and liability of compliance with the open meetings and open records acts. On the other hand, although Kansas One Call is a private corporation, the KUUDPA statute effectively makes them a monopoly and requires all utilities to become members. Under this scenario, the members have no recourse to resign their membership or appeal the board's decision if they disagree with the direction governing body. As an alternative to requiring Kansas One Call to become a public agency, the group of conferees proposes to amend the statute to allow the Corporation Commission to become an avenue of recourse for any member of Kansas One Call that may have a complaint about the operation of the corporation. Additionally, our proposal would allow the Commission to investigate on its own initiative any term or practice of the call center to assure compliance with KUUDPA. The proposed language is included with this report as **Attachment 1**.



The third issue requested by the Utilities Committee for review by the group of conferees was the provision in HB 2637 that allows water and sewer utilities operated by municipalities to opt out of compliance with the law because of a non-uniform application of the law to cities of various classes. It is our understanding that the provisions of HB 2637 are considered non-uniform because it allows cities with more than 20,000 water/wastewater customers to set up its own call center, and by doing so, only incur a charge of \$500 per year for referral services from Kansas One Call. Cities with less than 20,000 customers would not have the luxury of using this option, and therefore, the law could not be uniformly applied to cities with population/customers less than 20,000. The group of conferees believes an easy way to remedy the non-uniform issue would be to delete the requirement that a water/wastewater utility must have 20,000 customers in order to qualify for Tier 3. **Attachment 2** to this report provides the proposed amendment to K.S.A 66-1802 that would accomplish this change. It must be noted, however, the proposed change would not address the advantage of significant cost savings that Tier 3 members would have over all other underground utility operators. In fact, this change may be an incentive for water/wastewater utilities to set up independent call centers. The group of conferees agreed the \$500 annual charge to Tier 3 members was not equitable and would result in other underground utilities subsidizing the Tier 3 members. However, an alternate amount was not discussed by this group.

The group of conferees discussed a fourth proposal offered by Commission Staff and meant to remedy the non-uniform issue and resolve the inequity of charges between members. Two members of the group, Water One and the City of Olathe, opposed this proposal. Staff's proposal provides a mechanism that may remove the non-uniform clause from HB2637 and achieve parity of charges from Kansas One Call between Tier 2 and Tier 3 members over a four year period. This proposal, which was not fully vetted by the group of conferees, is included as **Attachment 3** for your review.

2-3

## ATTACHMENT 1

### PROPOSAL TO RESOLVE ISSUE OF KANSAS ONE CALL AS A PUBLIC AGENCY

#### Statute 66-1805 Notification center.

(a) This act recognizes the establishment of a single notification center for the state of Kansas *that is owned and operated by its members*. Each operator who has an underground facility shall become a member of the notification center.

*(b) The notification center shall provide, in a manner that is just, reasonable, not unjustly discriminatory and not unduly preferential, services to each member as listed in this section.*

*(c) The state corporation commission, in its discretion, may at any time review a fee, term or practice being used by the notification center. Upon such review, the commission may initiate a proceeding to determine whether a violation of this section has occurred. Upon notice and an opportunity for hearing in accordance with the Kansas administrative procedure act, the commission shall have authority to order the remediation of any violation of this section that the commission finds has occurred.*

*(d) Any member of the notification center may request the commission to investigate and initiate proceedings to review a fee, term or practice being used by the notification center.*

(b) (e) 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.

(e) (f) 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.

(d) (g) Notification 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) (h) 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.

(f) (i) 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.

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

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

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

(j) (m) 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) (n) 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.

~~(l) The notification center established pursuant to this section shall 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.~~

*(o) The notification center shall not disseminate, make available or otherwise distribute data or information provided by an operator unless such dissemination, availability or distribution 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)~~ (p) On and after ~~July 1, 2009,~~ January 1, 2010, 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. 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.~~

## ATTACHMENT 2

### PROPOSAL TO AMEND THE DEFINITION OF TIER 3 FACILITY TO ADDRESS NON-UNIFORM APPLICATION OF KUUDPA TO MUNICIPAL GOVERNMENTS

**Statute 66-1802** Definitions. As used in this act:

..... (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~~ that 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.

2-7



## ATTACHMENT 3

### KCC STAFF PROPOSAL TO PHASE OUT TIER 3 OPERATORS COST DIFFERENTIAL OVER A PERIOD OF 4 YEARS

**Statute 66-1802** Definitions. As used in this act:

..... (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~~ that 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 an annual fee based on 50% of the rate charged to tier 1 facility members for each notice of proposed excavation submitted to the notification center or \$5,000 per year, whichever is less ~~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. The referral fee charged to operators of Tier 3 facilities shall be increased on a proportional basis every 12 months after the effective date of this statute until parity of charges between all operators of Tier 2 facilities is reached by the year 2014. Tier 3

members shall be subject to all provisions of 66-1804, 66-1805, 66-1806 and amendments thereto.

**Statute 66-1805 Notification center.**

(a) This act recognizes the establishment of a single notification center for the state of Kansas. 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.

(d) Notification 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.

(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.

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

2-9

**SENATE BILL No. 58**

By Committee on Utilities

1-21

Proposed Amendment  
Attachment 1 KCC testimony

9 AN ACT concerning utilities; relating to the underground utility damage  
10 prevention act; definitions; amending K.S.A. 66-1802, as amended by  
11 section 5 of chapter 122 of the 2008 Session Laws of Kansas, and  
12 repealing the existing section.

and K.S.A. 66-1805, as amended by section 7 of chapter 122 of the 2008  
Session Laws of Kansas

sections

13  
14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. K.S.A. 66-1802, as amended by section 5 of chapter 122  
16 of the 2008 Session Laws of Kansas, is hereby amended to read as follows:  
17 66-1802. As used in this act:

18 (a) "Damage" means any impact or contact with an underground fa-  
19 cility, its appurtenances or its protective coating, or any weakening of the  
20 support for the facility or protective housing which requires repair.

21 (b) "Emergency" means any condition constituting a clear and pres-  
22 ent danger to life, health or property, or a customer service outage.

23 (c) "Excavation" means any operation in which earth, rock or other  
24 material below the surface is moved or otherwise displaced by any means,  
25 except tilling the soil for normal agricultural purposes, or railroad or road  
26 and ditch maintenance that does not change the existing railroad grade,  
27 road grade ~~and/or~~ or ditch, or both, flowline, or operations related to  
28 exploration and production of crude oil or natural gas, or both.

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

33 (e) "Facility" means any sanitary sewer or underground line, system  
34 or structure used for transporting, gathering, storing, conveying, trans-  
35 mitting or distributing potable water, gas, electricity, communication,  
36 crude oil, refined or processed petroleum, petroleum products or haz-  
37 ardous liquids; facility shall not include, any stormwater sewers or pro-  
38 duction petroleum lead lines, salt water disposal lines or injection lines,  
39 which are not located on platted land or inside the corporate limits of any  
40 city.

41 (f) "Locatable facility" means facilities for which the tolerance zone  
42 can be determined by the operator using generally accepted practices  
43 such as as-built construction drawings, system maps, probes, locator de-

Senate Utilities Committee  
February 11, 2009  
Attachment 3-1

3-2

- 1 vices or any other type of proven technology for locating.
- 2 (g) "Marking" means the use of stakes, paint, flags or other clearly
- 3 identifiable materials to show the field location of underground facilities,
- 4 in accordance with the rules and regulations promulgated by the state
- 5 corporation commission in the administration and enforcement of this
- 6 act.
- 7 (h) "Municipality" means any city, county, municipal corporation,
- 8 public district or public authority located in whole or in part within this
- 9 state which provides firefighting, law enforcement, ambulance, emer-
- 10 gency medical or other emergency services.
- 11 (i) "Notification center" means the statewide communication system
- 12 operated by an organization which has as one of its purposes to receive
- 13 and record notification of planned excavation in the state from excavators
- 14 and to disseminate such notification of planned excavation to operators
- 15 who are members and participants.
- 16 (j) "Operator" means any person who owns or operates an under-
- 17 ground tier 1 or tier 2 facility, except for any person who is the owner of
- 18 real property wherein is located underground facilities for the purpose of
- 19 furnishing services or materials only to such person or occupants of such
- 20 property.
- 21 (k) "Preengineered project" means a public project or a project which
- 22 is approved by a public agency wherein the public agency responsible for
- 23 the project, as part of its engineering and contract procedures, holds a
- 24 meeting prior to the commencement of any construction work on such
- 25 project in which all persons, determined by the public agency to have
- 26 underground facilities located within the construction area of the project,
- 27 are invited to attend and given an opportunity to verify or inform the
- 28 public agency of the location of their underground facilities, if any, within
- 29 the construction area and where the location of all known and under-
- 30 ground facilities are duly located or noted on the engineering drawing as
- 31 specifications for the project.
- 32 (l) "Permitted project" means a project where a permit for the work
- 33 to be performed must be issued by a city, county, state or federal agency
- 34 and, as a prerequisite to receiving such permit, the applicant must locate
- 35 all underground facilities in the area of the work and in the vicinity of the
- 36 excavation and notify each owner of such underground facilities.
- 37 (m) "Person" means any individual, partnership, corporation, asso-
- 38 ciation, franchise holder, state, city, county or any governmental subdivi-
- 39 sion or instrumentality of a state and its employees, agents or legal
- 40 representatives.
- 41 (n) "Production petroleum lead line" means an underground facility
- 42 used for production, gathering or processing on the lease or unit, or for
- 43 delivery of hydrocarbon gas ~~and/or~~ or liquids, or both, to an associated

1 tank battery, separator or sales facility. Production petroleum lead lines  
2 shall include underground lines associated with lease fuel and saltwater  
3 disposal and injection.

4 (o) "Platted land" means a tract or parcel of land which has been  
5 subdivided into lots of less than five acres for the purpose of building  
6 developments, including housing developments, and for which a sur-  
7 veyor's plat has been filed of record in the office of the register of deeds  
8 in the county where the land is located.

9 (p) "Tier 1 facility" means an underground facility used for trans-  
10 porting, gathering, storing, conveying, transmitting or distributing gas,  
11 electricity, communications, crude oil, refined or reprocessed petroleum,  
12 petroleum products or hazardous liquids.

13 (q) "Tier 2 facility" means an underground facility used for trans-  
14 porting, gathering, storing, conveying, transmitting or distributing potable  
15 water or sanitary sewage.

16 (r) "Tier 3 facility" means a water or wastewater system utility which  
17 serves more than 20,000 customers who elects to be a tier 3 member of  
18 the notification center pursuant to this subsection. The operator of a tier  
19 3 facility shall:

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

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

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

25 (4) employ not less than two individuals whose primary job function  
26 shall be the location of underground utilities. Operators of tier 3 facilities  
27 shall make either such website or contact information available to the  
28 notification center. The notification center shall collect and charge a fee  
29 of \$500 a year for each tier 3 facility. No other fee, charge or cost shall  
30 be assessed to a tier 3 facility by the notification center. Tier 3 members  
31 shall be subject to all provisions of ~~section 5 through section 10, the un-~~  
32 ~~derground utility damage prevention act, 66-1801, et seq., and amend-~~  
33 ~~ments thereto.~~

34 (s) "Tolerance zone" means the area ~~not less than~~ within 24 inches  
35 of the outside dimensions in all horizontal directions of an underground  
36 facility, except that a ~~larger~~ tolerance zone ~~for a tier 1, 2 or 3 facility~~ larger  
37 ~~than 24 inches~~ may be established by rules and regulations adopted under  
38 K.S.A. 2008 Supp. 66-1815, and amendments thereto. An operator of a  
39 water or wastewater facility may elect to ~~use a~~ *define the* tolerance zone  
40 ~~for such water or wastewater facility in which tolerance zone means as~~  
41 ~~the area not less than~~ within 60 inches of the outside dimensions in all  
42 horizontal directions of an underground water or wastewater facility ~~upon~~  
43 ~~notification of the excavator, except that a larger tolerance zone may be~~

3-4

1 established by rules and regulations adopted under K.S.A. 2008 Supp.  
2 66-1815, and amendments thereto provided notice of such election is  
3 given to the excavator prior to locates being performed.

4 (t) "Update" means an additional request from the excavator to ex-  
5 tend the time period of the request for intent to excavate beyond the 15  
6 calendar day duration of the request.

7 (u) "Whitelining" means the act of marking by the excavator the route  
8 or boundary of the proposed excavation site with white paint, white stakes  
9 or white flags.

10 (v) "Working day" means every day Monday through Friday begin-  
11 ning at 12:01 a.m., except for the following officially recognized holidays:  
12 New Year's day, Memorial day, Independence day, Labor day, Thanks-  
13 giving day, the day after Thanksgiving and Christmas.

3. 14 ~~Sec. 2.~~ K.S.A. 66-1802, as amended by section 5 of chapter 122 of  
15 the 2008 Session Laws of Kansas, is hereby repealed.

Insert: Sec. 2. Attached

4. 16 Sec. 3. This act shall take effect and be in force from and after its  
17 publication in the statute book.

and K.S.A. 66-1805, as amended by section 7 of chapter 122 of the  
2008 Session Laws of Kansas are

Sec. 2. K.S.A. 2008 Supp. 66-1805, as amended by section 7 of chapter 122 of the 2008 Session Laws of Kansas, is hereby amended to read as follows: 66-1805. (a) This act recognizes the establishment of a single notification center for the state of Kansas that is owned and operated by its members. Each operator who has an underground facility shall become a member of the notification center.

(b) The notification center shall provide, in a manner that is just, reasonable, not unjustly discriminatory and not unduly preferential, services to each member as prescribed in this section.

(c) The state corporation commission, in its discretion, may at any time review a fee, term or practice being used by the notification center. Upon such review, the commission may initiate a proceeding to determine whether a violation of this section has occurred. Upon notice and an opportunity for hearing in accordance with the Kansas administrative procedure act, the commission shall have authority to order the remediation of any violation of this section that the commission finds has occurred.

(d) Any member of the notification center may request the commission to investigate and initiate proceedings to review a fee, term or practice being used by the notification center.

~~(b)~~ (e) 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.

~~(e)~~ (f) 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.

~~(d)~~ (g) Notification to operators as defined in subsection (b) shall be given by notifying the notification center by telephone at the toll free number or by other communication methods approved by the notification center. The content of such notification shall be as required by K.S.A. 66-1804, and amendments thereto.

~~(e)~~ (h) 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.

~~(f)~~ (i) 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.

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

~~(h)~~ (k) A suitable record shall be maintained by operators of tier 2 facilities that desire direct contact with the

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

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

(j) (m) 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) (n) Upon request of the operator, the person filing the notice of intent to excavate shall whieline the proposed excavation site prior to locates being performed.

~~(l) The notification center established pursuant to this section shall 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.~~

(o) The notification center shall not disseminate, make available or otherwise distribute data or information provided by

an operator 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} (p) On and after ~~July 17, 2009~~ January 1, 2010, 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.--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. 45-2157--et--seq.7--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.7--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.~~

SENATE BILL No. 58

By Committee on Utilities

1-21

Proposed Amendment  
Attachment 3 KCC testimony

9 AN ACT concerning utilities; relating to the underground utility damage  
10 prevention act; definitions; amending K.S.A. 66-1802, as amended by  
11 section 5 of chapter 122 of the 2008 Session Laws of Kansas; and  
12 repealing the existing section.

and K.S.A. 66-1805, as amended by section 7 of chapter 122  
of the 2008 Session Laws of Kansas

sections

13  
14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. K.S.A. 66-1802, as amended by section 5 of chapter 122  
16 of the 2008 Session Laws of Kansas, is hereby amended to read as follows:  
17 66-1802. As used in this act:

18 (a) "Damage" means any impact or contact with an underground fa-  
19 cility, its appurtenances or its protective coating, or any weakening of the  
20 support for the facility or protective housing which requires repair.

21 (b) "Emergency" means any condition constituting a clear and pres-  
22 ent danger to life, health or property, or a customer service outage.

23 (c) "Excavation" means any operation in which earth, rock or other  
24 material below the surface is moved or otherwise displaced by any means,  
25 except tilling the soil for normal agricultural purposes, or railroad or road  
26 and ditch maintenance that does not change the existing railroad grade,  
27 road grade ~~and/or~~ or ditch, or both, flowline, or operations related to  
28 exploration and production of crude oil or natural gas, or both.

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

33 (e) "Facility" means any sanitary sewer or underground line, system  
34 or structure used for transporting, gathering, storing, conveying, trans-  
35 mitting or distributing potable water, gas, electricity, communication,  
36 crude oil, refined or processed petroleum, petroleum products or haz-  
37 ardous liquids; facility shall not include, any stormwater sewers or pro-  
38 duction petroleum lead lines, salt water disposal lines or injection lines,  
39 which are not located on platted land or inside the corporate limits of any  
40 city.

41 (f) "Locatable facility" means facilities for which the tolerance zone  
42 can be determined by the operator using generally accepted practices  
43 such as as-built construction drawings, system maps, probes, locator de-

Senate Utilities Committee  
February 11, 2009  
Attachment 4-1

4-2

- 1 vices or any other type of proven technology for locating.
- 2 (g) "Marking" means the use of stakes, paint, flags or other clearly
- 3 identifiable materials to show the field location of underground facilities,
- 4 in accordance with the rules and regulations promulgated by the state
- 5 corporation commission in the administration and enforcement of this
- 6 act.
- 7 (h) "Municipality" means any city, county, municipal corporation,
- 8 public district or public authority located in whole or in part within this
- 9 state which provides firefighting, law enforcement, ambulance, emer-
- 10 gency medical or other emergency services.
- 11 (i) "Notification center" means the statewide communication system
- 12 operated by an organization which has as one of its purposes to receive
- 13 and record notification of planned excavation in the state from excavators
- 14 and to disseminate such notification of planned excavation to operators
- 15 who are members and participants.
- 16 (j) "Operator" means any person who owns or operates an under-
- 17 ground tier 1 or tier 2 facility, except for any person who is the owner of
- 18 real property wherein is located underground facilities for the purpose of
- 19 furnishing services or materials only to such person or occupants of such
- 20 property.
- 21 (k) "Preengineered project" means a public project or a project which
- 22 is approved by a public agency wherein the public agency responsible for
- 23 the project, as part of its engineering and contract procedures, holds a
- 24 meeting prior to the commencement of any construction work on such
- 25 project in which all persons, determined by the public agency to have
- 26 underground facilities located within the construction area of the project,
- 27 are invited to attend and given an opportunity to verify or inform the
- 28 public agency of the location of their underground facilities, if any, within
- 29 the construction area and where the location of all known and under-
- 30 ground facilities are duly located or noted on the engineering drawing as
- 31 specifications for the project.
- 32 (l) "Permitted project" means a project where a permit for the work
- 33 to be performed must be issued by a city, county, state or federal agency
- 34 and, as a prerequisite to receiving such permit, the applicant must locate
- 35 all underground facilities in the area of the work and in the vicinity of the
- 36 excavation and notify each owner of such underground facilities.
- 37 (m) "Person" means any individual, partnership, corporation, asso-
- 38 ciation, franchise holder, state, city, county or any governmental subdivi-
- 39 sion or instrumentality of a state and its employees, agents or legal
- 40 representatives.
- 41 (n) "Production petroleum lead line" means an underground facility
- 42 used for production, gathering or processing on the lease or unit, or for
- 43 delivery of hydrocarbon gas ~~and/or~~ or liquids, or both, to an associated

4-3

1 tank battery, separator or sales facility. Production petroleum lead lines  
2 shall include underground lines associated with lease fuel and saltwater  
3 disposal and injection.

4 (o) "Platted land" means a tract or parcel of land which has been  
5 subdivided into lots of less than five acres for the purpose of building  
6 developments, including housing developments, and for which a sur-  
7 veyor's plat has been filed of record in the office of the register of deeds  
8 in the county where the land is located.

9 (p) "Tier 1 facility" means an underground facility used for trans-  
10 porting, gathering, storing, conveying, transmitting or distributing gas,  
11 electricity, communications, crude oil, refined or reprocessed petroleum,  
12 petroleum products or hazardous liquids.

13 (q) "Tier 2 facility" means an underground facility used for trans-  
14 porting, gathering, storing, conveying, transmitting or distributing potable  
15 water or sanitary sewage.

16 (r) "Tier 3 facility" means a water or wastewater system utility which  
17 serves more than 20,000 customers who elects to be a tier 3 member of  
18 the notification center pursuant to this subsection. The operator of a tier  
19 3 facility shall:

that

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

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

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

25 (4) employ not less than two individuals whose primary job function  
26 shall be the location of underground utilities. Operators of tier 3 facilities  
27 shall make either such website or contact information available to the  
28 notification center. The notification center shall collect and charge a fee  
29 of \$500 a year for each tier 3 facility. No other fee, charge or cost shall  
30 be assessed to a tier 3 facility by the notification center. Tier 3 members  
31 shall be subject to all provisions of section 5 through section 10, the un-  
32 derground utility damage prevention act, 66-1801, et seq., and amend-  
33 ments thereto.

an annual fee based on 50% of the rate charged to tier 1 facility members for each notice of proposed excavation submitted to the notification center or \$5,000 per year, whichever is less

34 (s) "Tolerance zone" means the area not less than within 24 inches  
35 of the outside dimensions in all horizontal directions of an underground  
36 facility, except that a larger tolerance zone for a tier 1, 2 or 3 facility larger  
37 than 24 inches may be established by rules and regulations adopted under  
38 K.S.A. 2008 Supp. 66-1815, and amendments thereto. An operator of a  
39 water or wastewater facility may elect to use a define the tolerance zone  
40 for such water or wastewater facility in which tolerance zone means as  
41 the area not less than within 60 inches of the outside dimensions in all  
42 horizontal directions of an underground water or wastewater facility upon  
43 notification of the excavator, except that a larger tolerance zone may be

The referral fee charged to operators of a tier 3 facilities shall be increased on a proportional basis every 12 months after the effective date of this section until parity of charges between all operators of tier 2 facilities is reached by the year 2014.

4-4

1 established by rules and regulations adopted under K.S.A. 2008 Supp.  
2 66-1815, and amendments thereto provided notice of such election is  
3 given to the excavator prior to locates being performed.

4 (t) "Update" means an additional request from the excavator to ex-  
5 tend the time period of the request for intent to excavate beyond the 15  
6 calendar day duration of the request.

7 (u) "Whitelining" means the act of marking by the excavator the route  
8 or boundary of the proposed excavation site with white paint, white stakes  
9 or white flags.

10 (v) "Working day" means every day Monday through Friday begin-  
11 ning at 12:01 a.m., except for the following officially recognized holidays:  
12 New Year's day, Memorial day, Independence day, Labor day, Thanks-  
13 giving day, the day after Thanksgiving and Christmas.

Insert Sec. 2. Attached

3. ~~Sec. 2.~~ K.S.A. 66-1802, as amended by section 5 of chapter 122 of  
15 the 2008 Session Laws of Kansas, ~~is~~ hereby repealed.

and K.S.A. 66-1805, as amended by section 7 of chapter 122 of the  
2008 Session Laws of Kansas are

4. ~~Sec. 3.~~ This act shall take effect and be in force from and after its  
17 publication in the statute book.



Sec. 2. K.S.A. 2008 Supp. 66-1805, as amended by section 7 of chapter 122 of the 2008 Session Laws of Kansas, is hereby amended to read as follows: 66-1805. (a) This act recognizes the establishment of a single notification center for the state of Kansas. 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.

(d) Notification to operators as defined in subsection (b) shall be given by notifying the notification center by telephone at the toll free number or by other communication methods approved by the notification center. The content of such notification shall be as required by K.S.A. 66-1804, and amendments thereto.

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

(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.

(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 (c) 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 operators of a tier 2 facility members that desire direct contact with the excavator in an amount no more than 50% of the referral fee rate charged to tier 1 facility members for each notice of proposed excavation submitted to the notification center.

(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.

(l) The notification center established pursuant to this section shall 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. 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.