

MINUTES OF THE HOUSE ENERGY AND UTILITIES COMMITTEE

The meeting was called to order by Vice-Chair Forrest Knox at 9:15 a.m. on January 28, 2010, in Room 785 of the Docking State Office Building.

All members were present except:

- Representative Carl Holmes- excused
- Representative Tom Sloan- excused
- Representative Mike Slattery- excused
- Representative Annie Kuether- excused
- Representative Mike Burgess- excused
- Representative Tom Moxley- excused

Committee staff present:

- Matt Sterling, Office of the Revisor of Statutes
- Cindy Lash, Kansas Legislative Research Department
- Iraida Orr, Kansas Legislative Research Department
- Renae Hansen, Committee Assistant

Conferees appearing before the Committee:

- Leo Haynos, KCC
- George Melling, Kansas Gas Service
- Mark Schreiber, Westar
- Coleen Jennison, Cox Communications
- Tom Shimon, Kansas One Call
- Kimberly Winn, Kansas League of Municipalities
- Darcy Meece, Water One
- Elmer Ronnebaum, Kansas Rural Water Association
- David Cox, City of Olathe

Others attending:

Twenty-Four including the attached list.

Hearing on:

**SB 58 - Sub for S 58 by Committee on Utilities – Kansas underground utility damage prevention act amendments.**

Matt Sterling, Office of the Revisor of Statutes, (Attachment 1), gave an explanation of **Sub for SB 58**.

Neutral:

Leo Haynos, KCC, (Attachment 2), offered information to the committee from an informational standpoint on **Sub for SB 58**. Additionally, he noted that the KCC is in favor of **Sub for SB 58**. He also stated that they were more in favor of the language in **HB 2240** than of the language in **Sub for SB 58**.

Questions were asked and comments made by Representatives: Rob Olson, Vince Wetta, Forrest Knox, Milack Talia, and Vern Swanson.

Proponents:

George Melling, Kansas Gas Service, (Attachment 3), spoke to the committee in favor of **Sub for SB 58**.

Mark Schreiber, Westar, (Attachment 4), offered written testimony in support of **Sub for SB 58**.

Colleen Jennison, Cox Communications, (Attachment 5), believes **Sub for SB 58** is a reasonable approach to a fair fee approach and is in support of the bill.

CONTINUATION SHEET

Minutes of the House Energy and Utilities Committee at 9:15 a.m. on January 28, 2010, in Room 785 of the Docking State Office Building.

Tom Shimon, Kansas One Call, (Attachment 6), gave the committee a history of the Kansas One Call system and offered support for **Sub for SB 58**. He noted that they try to match their income from the utilities for one call to their expenses. He also noted that they support **HB 2240**.

Questions were asked and comments made by Representatives: Rob Olson, Rocky Fund, Joe Seiwert, and Forrest Knox.

Opponents:

Kimberly Winn, Kansas League of Municipalities (Attachment 7), spoke to the committee in opposition to **Sub for SB 58**. She noted that there were drafting errors in the bill, that **Sub for SB 58** undermines home rule, and **Sub for SB 58** removes public notice requirements.

Darcy Meece, Water One, (Attachment 8), spoke to the committee in opposition to **Sub for SB 58** noting that they were already doing a utility marking service themselves and really do not want to opt into the state one call system. They are a tier 3 utility under the current One Call system.

Elmer Ronnebaum, Kansas Rural Water Association, (Attachment 9), spoke in opposition to **Sub for SB 58** and noted that they like the 2008 law **HB 2637** and feel that the current law works well and this proposed bill would cause major changes to happen that would not be beneficial.

David Cox, City of Olathe, (Attachment 10), spoke to the committee in opposition of **Sub for SB 58**. He noted they are a tier 3 utility in the Kansas One Call system, and spent some time explaining what it is that they do concerning excavator digs and locating water lines and sewer lines. He noted that this is an unfunded mandate and estimate a 1-2% increase in consumer water bills.

Representative Rob Olson asked the research staff to find out some information about the current one call system and problem digs that have actually occurred.

Questions were asked and comments made by Representatives: Rob Olson, Milack Talia, Vern Swanson, Forrest Knox, Joe Seiwert, and Cindy Neighbor.

There was a clarification made by Revisor Matt Sterling about **Sub for SB 58**. He noted the committee would have to work off the current statute and not the language that was erroneously placed in **Sub for SB 58**.

The hearing on **Sub for SB 58** was closed.

Representative Milack Talia moved to introduce a bill to promoting the construction of energy efficient public schools. Seconded by Representative Margaret Long. Motion Passed.

Representative Milack Talia moved to introduce a bill to add a definition to the statute pertaining to the facility conservation improvement program specifically adding a definition to define the words capital cost avoidance. Seconded by Representative Cindy Neighbor. Motion Passed.

Representative Milack Talia moved to introduce a bill that would create what is known as a property assessed renewable energy bond, whereby local units of government can draw down money from the federal government to purchase energy efficient products such as solar panels and wind turbines that would promote residential and small wind. Second by Representative Margaret Long. Motion Passed.

The next meeting is scheduled for February 2, 2010.

The meeting was adjourned at 10:45 a.m.

# HOUSE ENERGY AND UTILITIES COMMITTEE GUEST LIST

DATE: January 28, 2010

NAME	REPRESENTING
Walter Jannison	COX
Don Hollman	KEC
Tom Shimon	Kansas One Call
Leo Haynos	KCC
Mark Schreiber	Westar
PHIL WAGES	KEPCO
Tom Brackner	AT&T
JUDITH GARD	CAPITOL ADVANTAGE
Dan Murre	Western One
TRAVIS LOVE	Little Govt Relations
Scott Jones	KCPCL
Mike Quate	ATMOS Energy
Mick Urban	ONEUK
HARRY BERG	MIDWEST ENERGY
DAVID COX	Olathe
David Brines	Olathe
George Mely	Kansas Gas Service
LOW STANTON	Northern Natural GAS
Cory Mohr	KDOC

# HOUSE ENERGY AND UTILITIES COMMITTEE GUEST LIST

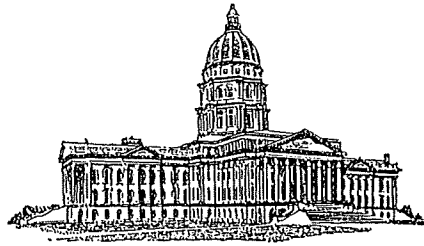
DATE: January 28, 2010

NAME	REPRESENTING
<i>Michelle Peterson</i>	<i>Capitol Strategies</i>
<i>Alison Krueger</i>	<i>Sure West</i>

MARY ANN TORRENCE, ATTORNEY  
REVISOR OF STATUTES

JAMES A. WILSON III, ATTORNEY  
FIRST ASSISTANT REVISOR

GORDON L. SELF, ATTORNEY  
FIRST ASSISTANT REVISOR



OFFICE OF REVISOR OF STATUTES  
KANSAS LEGISLATURE

Legal Consultation—  
Legislative Committees and Legislators  
Legislative Bill Drafting  
Legislative Committee Staff  
Secretary—  
Legislative Coordinating Council  
Kansas Commission on  
Interstate Cooperation  
Kansas Statutes Annotated  
Editing and Publication  
Legislative Information System

MEMORANDUM

To: Chairman Holmes and members of the House Energy and Utilities Committee  
From: Matt Sterling, Assistant Revisor of Statutes  
Date: 1/28/10  
Subject: Substitute for Senate Bill No. 58

Substitute for Senate Bill 58 is a carryover bill from the 2009 legislative session that amends provisions of the underground utility damage prevention act. The sections amended by this bill, K.S.A. 2009 Supp. 66-1802, 66-1804, 66-1805 and 66-1806 were all amended by sections 5, 6, 7, 8, 9 and 10 of chapter 122 of the 2008 Session Laws with an effective date of July 1, 2009. This codified much of the amendatory language contained in Substitute for Senate bill 58. Below is a listing, with a few stylistic exceptions, of the remaining language in the bill that is not currently in statute. The language in italics is currently not in statute, all other language went into effect on July 1, 2009.

Section 1 K.S.A. 2009 Supp. 66-1802:

(r)(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 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 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 section 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 the underground utility damage prevention act, K.S.A. 66-1801, et seq., and amendments thereto.

(s) "Tolerance zone" means the area within 24 inches of the outside dimensions in all horizontal directions of an underground facility, except that a tolerance zone larger than 24 inches may be established by rules and regulations adopted under K.S.A. 2008 Supp. 66-1815, and amendments thereto. *An operator of a water or wastewater facility may elect to define the tolerance zone as the area within 60 inches of the outside dimensions in all horizontal directions of an underground water or wastewater facility provided notice of such election is given to the*

HOUSE ENERGY AND UTILITIES

DATE: 1/28/2010

300 SW TENTH AVE - STE 010-E, Statehouse—TOPEKA, KAN  
PHONE (785) 296-2321 FAX (785) 296-6668

E-mail: Revk ATTACHMENT 1-1

*excavator prior to locates being performed.*

Sec. 2. K.S.A. 2009 Supp. 66-1804:

All proposed changes in Substitute for Senate Bill 58 were adopted.

Sec. 3. K.S.A. 2009 Supp. 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.*

(m) The notification center shall charge a referral fee to operators of a tier 2 facility 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.*

Sec. 4. K.S.A. 2009 Supp. 66-1806:

All proposed changes in Substitute for Senate Bill 58 were adopted.



Mark Parkinson, Governor  
Thomas E. Wright, Chairman  
Michael C. Moffet, Commissioner  
Joseph F. Harkins, Commissioner

**Before the House Energy and Utilities Committee  
Comments by the  
Staff of the Kansas Corporation Commission  
January 28, 2010**

**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. Over the last few years, there have been several bills introduced to revise the Kansas Underground Utility Damage Prevention Act (KUUDPA). As you may recall, HB 2637 amended KUUDPA in the 2008 legislative session with the effective date for many of the changes to occur on July 1, 2009. The major emphasis of the HB 2637 amendments was the inclusion of potable water and sanitary sewers as subject to requirements of the Act. In the 2009 legislative session, the KCC introduced SB 58 with the purpose of making a technical correction to the definition of the term, "tolerance zone", and setting the effective date of the statute at January 1, 2010. During the course of discussions before the Senate committee, other conferees raised issues concerned with the statutory establishment of Tier 3 members of Kansas One Call and certain requirements that HB 2637 placed on Kansas One Call, Inc., the operator of the notification center. Amendments addressing these issues were added by the Senate utilities committee to the KCC-proposed amendments to form the bill that is before you today. Because HB 2637 was not in effect during the 2009 legislative session, the changes shown in SB 58 as italicized type do not reflect those portions of HB 2637 amendments that were deleted by SB 58. After July 1, 2009, however HB 2637 went into effect with the result being that SB 58 may not accurately reflect the law as it is today. In order to put into context what SB 58 removes from and adds to KUUDPA in its current form, I have provided a copy of the current law with SB 58 amendments included as **Attachment 1** to my testimony.

The change to the definition of the term "tolerance zone" proposed by the Commission can be found on Page 4, lines 1-2 of SB 58 where the word the word "within" was added to the definition of tolerance zone in order to establish a maximum tolerance zone width of 24 inches

*HOUSE ENERGY AND UTILITIES*

DATE: 1/28/2010

from each side of a buried facility. The proposed date change to January 1, 2010 is found at the beginning of each section throughout the bill. If this bill moves forward, this date would need to be changed to reflect a future date. Rather than make the effective date on July 1 during the height of the excavation season, Staff suggests an effective date of January 1, 2011.

### Tier 3 Membership Requirements

As you may recall, HB 2637 created special considerations for water and wastewater utilities that served more than 20,000 customers. If utilities meeting certain prerequisites established a call center capable of receiving notice of excavation via the internet, HB 2637 mandated the notification center could not charge more than \$500 per year for referring excavators to the Tier 3 member. Because most water and wastewater utilities are owned and operated by municipalities, many municipalities considered the statutory price cap established for Tier 3 members to be a non-uniform application of the statute. Cities with less than 20,000 customers would not have the luxury of using the Tier 3 membership option, and therefore, the law could not be uniformly applied to cities not meeting the Tier 3 criteria. As I understand it, if the law is non-uniform, the municipalities would be allowed to “opt out” of compliance with KUUDPA under the home rule provisions of the Kansas constitution. The amendments offered by SB 58 would remove the 20,000 customer threshold from the statute thereby removing the question of non-uniformity by allowing all water and wastewater utilities the option of operating as a Tier 3 member of the call center. 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 and would result in other underground utilities subsidizing the Tier 3 members. In order to make the burden of operating the notification center to be more equitably shared by all utilities, SB 58 increases the Tier 3 price cap to \$5,000 per year and establishes parity of charges from Kansas One Call between Tier 2 and Tier 3 members over a four-year period.

### Oversight of the Notification Center Provided by the KCC

HB 2637 deemed the notification center to be a public agency subject to the Kansas Open Records Act and Kansas Open Meetings Act. The bill also required the notification center to perform certain administrative functions such as an annual audit and a cost of service study every



five years. These amendments in HB 2637 were opposed by Kansas One Call, Inc. as undue interference into the operations of a private business. In fact, Kansas One Call has filed suit in Shawnee County District Court against the State of Kansas arguing the imposition of requirements on it resulting from the 2008 legislative amendments affecting the notification center is unconstitutional<sup>1</sup>. Although Kansas One Call is a private non-profit corporation, it is very unique in its role and duties. The notification center it operates has a narrowly tailored public safety mission. In fact, the KUUDPA statute effectively makes One Call 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 directions of the governing body. In an effort to address the concerns of ineffective oversight of the notification center implied by the amendments of HB 2637 and the claims of interference by Kansas One Call, SB58 proposes to remove the requirements making the notification center a public agency. Instead, oversight of the notification center is placed under the jurisdiction of the Commission. The intent of SB 58 appears to allow the Commission to investigate any practice of the notification center and to adjudicate any complaints regarding the operation of the center brought before the Commission. The KCC legal staff believes it would be beneficial to establish some oversight parameters to more clearly define the commission's role regarding oversight of the notification center. The amendments regarding Commission oversight of the notification center can be found on page 5, lines 14-36 of the bill.

#### Update on the Enactment of HB 2637

As I mentioned earlier, HB 2637 became effective on July 1, 2009. At that time, all water and wastewater facilities were required to become either a Tier 1, 2, or 3 member of Kansas One Call, Inc. Commission Staff has taken a "go slow" approach toward enforcement of this requirement in order to allow the notification center to assimilate the influx of new members. Instead of enforcement, we have attempted to educate all utilities of the law's new requirements. Also the trade associations, Kansas Rural Water Association, the League of Municipalities, and Kansas One Call, have been very active in identifying and educating water and sewer utilities of their new responsibilities. That being said, we still have many utilities that have not joined One Call. As of December 1, 2009, there were 243 municipalities and 228 rural water districts that

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<sup>1</sup> Case No. 09-C-000921 in the District Court of Shawnee County.

had not joined One Call. We also have 5 municipalities that have opted out of KUUDPA entirely citing “home rule” as the reason. Most of the water and sewer utilities that have joined One Call have signed up as Tier 1 members of the call center – primarily because Kansas One Call has established an introductory price structure that allows water and sewer utility operators a trial membership that is below the Tier 2 costs for the first two years. At this time, the call center has ten Tier 2 members, and three Tier 3 members, (Johnson County Water One, City of Olathe, and City of Wichita). Since July, Commission Staff has received only a few calls related to water utility Tier membership options. The few calls Staff has received from Tier 2 members have been focused on the fact that the utility operator did not receive the second call from the excavator. KCC Staff has also received a few calls about Tier 3 members regarding the operation of the individual call centers, call wait times, and use of the Tier 3 member’s websites. Because of the need for excavators to make two or more calls to receive utility locates, it is apparent more education of excavators will be necessary to explain how this unique Kansas system works.

In summary, the HB 2637 amendments to KUUDPA resulted in significant changes to the law. It is an understatement to say the law has become more complex- as evidenced by the ongoing lawsuit, the multiple call centers, municipalities “opting out” or “opting in” to compliance with the law, and mandated pricing caps shifting costs to other utilities. The main purpose of KUUDPA is a communication tool that promotes public safety. With that in mind, we suggest a law with straightforward requirements should be the ultimate goal of further KUUDPA amendments. To meet that goal KCC Staff respectfully suggests the committee consider HB 2240 in place of SB 58 as a means of streamlining the KUUDPA requirements. HB 2240 proposes to create a true “One Call” notification center for all utilities and remove the tiered cost structure in the current law. If HB 2240 is considered by this committee, we also suggest the bill formally define the KCC’s role in providing oversight of the notification center’s operations.

## ATTACHMENT 1

### Kansas Underground Utility Damage Prevention Act

**Bold Font: Changes incorporated into KUUDPA by HB 2637 on July 1, 2009**

Underlined and Strikeout Font: Changes Proposed by SB58 to KUUDPA in effect as of January 1, 2010.

#### 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~~ 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.~~ The notification center shall collect and charge 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 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 section 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.

~~(p)~~(s) "Tolerance zone" means the area ~~not less than~~ within 24 inches of the outside dimensions in all horizontal directions of an underground facility, ~~except that a larger tolerance zone 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 use a tolerance zone for such water or wastewater facility in which tolerance zone means the area 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.

~~(t)~~(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.

~~(u)~~(u) "Whitelineing" 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.

~~(v)~~(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.**

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

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

~~(e)~~(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, whitteline 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.

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

**(e) (h)** Notification to operators as defined in subsection ~~(e) (f)~~ 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 whitenline the proposed excavation site prior to locates being performed.

**(l) (o)** ~~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) (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.~~

#### 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), (b) or (c) 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.

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

#### **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.



**Before the House Committee on Energy and Utilities**  
**Substitute for Senate Bill 58**  
**Testimony of George R. Melling, Manager – Claims and Risk**  
**Kansas Gas Service, a Division of ONEOK, Inc.**  
**7421 W 129<sup>th</sup> Street, Overland Park, Kansas**  
**913-319-8627**  
**January 28, 2010**

Good morning Mr. Chairman 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 Substitute Senate Bill 58.

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 member and supporter of the Kansas One Call (KOC) system as a means for all utility operators to make a joint effort to achieve these goals. During 2009 Kansas Gas Service recorded approximately 1,000 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 work with escaping natural gas.

Substitute Senate Bill 58 cleans up some technical issues created when House Bill 2637 passed during the 2008 session. Even though Sub SB 58 leaves in place a tiered system of membership in KOC, the long term impact of this bill on Kansas Gas Service and system operators is workable. Although Sub SB 58 establishes reduced fees for these lower tiers of membership, it does phase out part of the discrepancy over the next few years thereby reducing the financial burden on KOC which would in turn be passed on to tier 1 members like Kansas Gas Service that will remain full paying tier 1 members.

Experience tells us that under the current system some excavators simply do not make the additional calls to underground system operators not fully participating in KOC. And even though all excavators are informed of a number to call to reach non-participating operators, there are excavators who simply do not make the call. This situation sometimes results in damage to underground facilities and creates potential risk and service interruptions to the public.

This concludes my testimony. Thank you for the opportunity to testify today and I would be pleased to stand for any questions.

*HOUSE ENERGY AND UTILITIES*  
DATE: 1/28/2010  
ATTACHMENT 3



**Testimony of Mark Schreiber  
Director Government Affairs, Westar Energy  
Before the House Energy and Utilities Committee  
On Sub for SB 58  
January 28, 2010**

Westar Energy supports the revisions in Sub for SB 58.

A couple of examples I would like to highlight are:

- The bill specifically includes water/wastewater facilities in the definition of "facility" on page 1.
- The change in the definition of "tolerance zone" on page 4 requires locates for water and wastewater facilities within a 60 inch tolerance zone. This improvement will enhance our ability to work safely and minimize the impact on other underground facilities.

At Westar Energy, we emphasize employee safety every day. We want everyone to go home in the evening in the same condition in which they arrived for work. We are a long-time member of Kansas One Call (KOC) and believe their efforts have enhanced the safety for all excavators and member company employees. The service KOC provides is invaluable to us in terms of our customers' and employees' safety. Sub for SB 58 promotes an equitable and safe environment for all entities that have underground facilities.

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



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Topeka, KS 66615  
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House Energy and Utilities Committee  
Sub for SB 58 Testimony  
Coleen Jennison, Director of Government Affairs  
Cox Communications  
January 28, 2010

Mr. Chairman and members of the committee thank you for holding this hearing and for allowing me the opportunity to present our view regarding this legislation. Cox Communications has long been involved in the One Call process.

Our Company (then Multimedia) was one of the five charter companies of Can U Dig it in 1978.

Our industry has had a member serve on the Executive Board for the past 15 years. Currently our representative is Joe Williams our Director of Systems Engineering.

Cox believes in the purpose of the organization. Every digging job requires a call be it an excavator or homeowner - even small projects like planting trees and shrubs. The depth of utility lines varies and there may be multiple utility lines in a common area. Digging without calling can disrupt service to an entire neighborhood, harm you and those around you and potentially result in fines and repair costs. Calling before every digging job gets your underground utility lines marked for free and helps prevent undesired consequences.

Cox's support of Sub for SB 58 boils down to one issue, fairness. If the program is a valuable one, and Cox believes it is, then all membership should share the costs in an equitable manner. The language in Sub for SB 58 takes into consideration the differences in facilities and implements a reasonable approach to a fair fee structure. Having the referral fee increased on a proportional basis every 12 months seems a reasonable process to bring all tier 3 operators gradually to parity.

Thank you, I would be happy to answer any questions.



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HOUSE ENERGY AND UTILITIES  
DATE: 1/28/2010  
ATTACHMENT 5





**Testimony of Tom Shimon  
Executive Director, Kansas One-Call  
Before the House Utilities Committee  
On Substitute for Senate Bill No. 58  
January 28, 2010**

Good morning Mr. Chairman and members of the committee. Thank you for the opportunity to provide testimony on Substitute SB 58.

Kansas One-Call supports the language in Substitute SB 58 as currently written. While it is not the preferred bill that we would like to have on the table, it goes a long way to correct the actions taken in 2008 with HB 2637. After all, damage prevention is a shared responsibility.

Kansas One-Call, Inc (KOC) was established as a private non-profit corporation in 1983 by a group of utilities to become the communications link between excavators and utilities anytime and anywhere in the state where excavation was to take place. KOC assumed the *de facto* role of the "notification center" when the first underground damage prevention statute was signed into law in 1993. KOC has performed these duties quite successfully for the past twenty-seven years.

In 2008, when the legislature passed HB 2637, there were several amendments made that are greatly impacting the day-to-day operations of the call center. I will address each of these separately below:

- 1.) Adopting a trifurcation of membership classes designating Tier 1, Tier 2 and Tier 3.
- 2.) Fixing the participation fees of Tier 2 and Tier 3 members.
- 3.) Deeming Kansas One-Call, Inc. to be a public agency subject to the Kansas Open Meetings Act (KOMA) and the Kansas Open Records Act (KORA).
- 4.) Requiring certain membership on its board of directors.
- 5.) Dictating that KOC prepare annual reports and undergo an annual audit.
- 6.) Requiring KOC to solicit proposals for the operation of the call center and effect cost of service audits every five years.

#1. No one argues that the primary purpose of HB 2637, as amended, was to mandate that water and wastewater utilities, like other utilities, be required to join the notification center and be subjected to the Kansas Underground Utility Damage Prevention Act (KUUDPA). The whole purpose of the notification center and the one-call concept was for excavators to call

HOUSE ENERGY AND UTILITIES

DATE: 1/28/2010

ATTACHMENT 6-1

ONCE to obtain all the information they need to avoid damaging an underground facility prior to excavating. With the creation of the multi-tiered membership, excavators are now required to place one or more additional calls to notify the Tier 2 and Tier 3 members of the notification center. While the Pipeline & Hazardous Materials Safety Administration (PHMSA) and the Common Ground Alliance (CGA) are working to bolster and strengthen the "one-call concept" (e.g., establishing 811 as the nationwide one-call number), it is my opinion, based on my years of experience, that Kansas is taking a step backwards and is reducing the effectiveness of a strong damage prevention program.

#2. The fixing of rates as between Tier 1 and Tier 2, Tier 2 and Tier 3, and Tier 1 and Tier 3, constitutes a confiscatory taking of property from one utility to subsidize another utility's participation. The price fixing is unsupportable and unexplainable from any standpoint, other than special interest lobbying. Can anyone provide a rational explanation why one utility should be treated different from another? I have not heard one to date. The disparate treatment of these membership classes has caused several cities/municipalities to declare "Home Rule", opting entirely out of the KUUDPA.

#3. The legislation of 2008 "deemed" the notification center to be a public agency. KOC is a private non-profit corporation. If KOC is to continue its role as the notification center in the state of Kansas, HB 2637 tries to subject KOC, what otherwise is not a public agency, to the requirements of KOMA and KORA. The Legislature previously recognized the need to specifically amend KOMA to add a new provision, KSA 75-4320(c) entitled "Sunflower Foundation, Healthcare for Kansas subject to open meetings law." Without this, the Sunflower Foundation was not a public agency subject to KOMA or KORA either. The amended statute provided that the Sunflower Foundation shall be deemed a public body and shall be subject to the open meetings law. Even if the Legislature has the power to waive this parliamentary step and "deem" an otherwise private organization to be a "public agency," the only precedent in the area reflects the Legislature knew that the amendments should be to KOMA and KORA and not "tagged on" to and buried beneath unrelated legislation. The title of HB 2637 makes no reference to KOMA and/or KORA. There are many Attorney General Opinions on who is and who is not subject to the requirements of KOMA and KORA, and KOC does not meet those requirements.

#s 4-6. KOC is a private non-profit corporation created by, managed by and operated by its member utilities. HB 2637 basically rips up and shreds its Bylaws, Articles of Incorporation and its operating policies. The owners of KOC (each and every underground utility member) have a vested interest in the successful operation and financial well being of the corporation. This is

done by a board of directors, who are elected annually at an annual meeting, who review and approve all financial documents and polices, establish near- and long-term goals and objectives for the KOC staff, the operating committee and the call center service provider. Every utility classification has representation on the board of directors. KOC utilizes two independent accounting firms to keep the financial records and file the required federal and state documents to maintain compliance. KOC prepares and publishes an annual report. You may review this document on our website at [www.kansasonecall.com](http://www.kansasonecall.com). KOC currently operates the call center with an experienced and highly qualified one-call service provider, issues an RFP and awards a new call center service contract every 3-5 years.

### **Conclusion**

While KOC supports Substitute Senate Bill No. 58 as written, it does so with a few reservations. Substitute Senate Bill No. 58 eliminates our issues with items numbered 3-6 above, but KOC would like for the committee to review: the multi-tiered membership, the price fixing of fees and the multiple calls that the excavator will be required to make to notify the Tier 2 and Tier 3 utilities of their planned excavation. All of the utilities are excavators themselves and at some time or another they come to understand that damage prevention is a shared responsibility.

Respectfully,

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



To: House Utilities Committee  
 From: Kim Winn, Director of Policy Development & Communications  
 Date: January 28, 2010  
 Re: Opposition to Sub SB 58

Thank you for the opportunity to appear today regarding Substitute for Senate Bill 58. As it is currently written, we must oppose this legislation for the following reasons:

- **Drafting Errors.** Bills are usually written in a fashion so that when current law is being amended, the law is recounted in its entirety and strikeouts and additions are noted. However, SB 58 recounts the prior law and purports to amend that, rather than the current law. We believe that this is a fatal flaw in this legislation as it deprives both citizens and legislators of full knowledge with respect to what exactly is being altered. I have attached a copy of the 2008 Session Laws, chapter 22 so that you may see what is really being changed with this bill.
- **SB 58 Undermines Home Rule.** It is not uncommon for states to have varying rules with regard to water utilities of different sizes. Kansas is no exception and when the mandatory one-call legislation was passed in 2008, different classifications were used in order to recognize that one-size-does-not-fit-all. Because of these classifications, cities are authorized by the Constitution to exempt themselves with the passage of a charter ordinance. A number of cities have exercised local control and have exempted themselves from this unfunded mandate. SB 58 seeks to remove these classifications so that cities will no longer be able to make this decision locally. For this reason, we must oppose this bill as it undermines the Home Rule authority of cities.
- **SB 58 Removes Public Notice Requirements.** The legislation that was passed in 2008 also clarified that Kansas One Call would be subject to the Kansas Open Meetings Act and the Kansas Open Records Act (See K.S.A. 66-1805 in Chapter 22 of the 2008 Kansas Session Laws). We have always believed that they are and should be considered a public agency for purposes of disclosure and notice. After all, this is an entity operating under statutory authority and with the mandate that public water suppliers (all of whom are subject to KOMA/KORA) must be members. We strenuously object to removing the KOMA/KORA requirements that were added in 2008 from current law.

For these reasons, we respectfully request that you do not forward Sub. SB 58 for further consideration. I would be happy to stand for questions at the appropriate time.

HOUSE ENERGY AND UTILITIES  
 DATE: 1/28/2010  
 ATTACHMENT 7-1

2-2

The local exchange carrier relieved of its carrier of last resort obligation to provide basic local telecommunications service to the occupant of the real property, pursuant to subsection (c), shall notify the commission of that fact within 120 days after receiving knowledge of the existence of such fact.

A local exchange carrier that is not automatically relieved of its carrier of last resort obligation pursuant to paragraph (2) of subsection (c) may seek a waiver of its carrier of last resort obligation from the commission for good cause shown based on the facts and circumstances surrounding the provision of local telecommunications service or internet access to a particular real property. Upon petition for such relief, notice shall be given by the local exchange carrier at the same time to the relevant owner or developer. The commission shall make a determination concerning the petition on or before 90 days after such petition is filed.

If all conditions described in paragraph (2) or (4) of subsection (c) cease to exist at the property, and the owner or developer requests in writing that the local exchange carrier make local telecommunications service available to occupants of the real property and confirms in writing that the conditions described in paragraph (2) or (4) of subsection (c) have ceased to exist at the property, the carrier of last resort obligation under subsection (c) shall again apply to the local exchange carrier at the real property. The local exchange carrier shall provide notice to the commission that it is assuming the carrier-of-last-resort obligation. The local exchange carrier may require that the owner or developer pay to the local exchange carrier in advance a reasonable fee to recover costs that exceed the costs that would have been incurred to construct or acquire facilities to serve customers at the real property initially. The commission may require that the fee enables the local exchange carrier to recover its costs that exceed the costs that would have been incurred to construct or acquire facilities to serve customers at the real property initially, including, but not limited to, amounts necessary to install or retrofit any facilities or equipment, to cut or trench sidewalks and streets and to restore roads, curbs, walks, block walls or landscapes to original conditions. The local exchange carrier shall have a reasonable period of time following the relief from the owner or developer to make arrangements for local telecommunications service availability. If a local exchange carrier is relieved of its carrier of last resort obligation under paragraph (2) or (4) of subsection (c), the owner or developer shall notify all occupants and any subsequent owner of the specific real property of the following: (1) That the incumbent local exchange carrier does not have facilities installed to provide service to the specific real property, and that such carrier has been relieved of its carrier of last resort obligations; and (2) the name of the person that the local exchange carrier may be used to provide such service. An incumbent local exchange carrier may meet the carrier's obligations under

this section using any available alternative technology. If any conditions described in paragraph (2) or (4) of subsection (c) again exist at the real property, the relief in paragraph (2) or (4) of subsection (c) shall again apply.

(6) When real property is located in a greenfield area, a carrier of last resort shall not automatically be excused from its obligations under paragraph (2) of subsection (c) unless the alternative service provider possesses or shall possess at the time of commencement of service the capability to provide local telecommunications service or the functional equivalent of such service through any form of technology.

(7) If an owner or developer of real property permits an alternative service provider to install its facilities or equipment used to provide local telecommunications service to such property based on a condition of exclusion of the local exchange carrier, the owner or developer must provide written notice to the purchaser of any such real property that there is an exclusion of that local exchange carrier, and that the alternative service provider is the exclusive provider of service to such property.

New Sec. 4. (a) The citizens' utility ratepayer board is hereby authorized to negotiate for contracts for professional services. Professional services which are required to be assessed under K.S.A. 66-1502, and amendments thereto, against the public utilities involved, include, but are not limited to, the services of engineers, accountants, attorneys and economists, in order to assist in preparing and presenting the expert testimony or otherwise carrying out the duties of the board.

(b) The negotiation for the contracts shall be performed by a negotiating committee which shall consist of the following: (1) The consumer counsel of the citizens' utility ratepayer board or the consumer counsel's designee; (2) the director of the budget or that director's designee; (3) the director of accounts and reports or that director's designee; and (4) the chairperson of the citizens' utility ratepayer board or the chairperson's designee. The consumer counsel of the citizens' utility ratepayer board or the consumer counsel's designee shall convene the negotiating committee for each such contract. The negotiating committee is authorized to negotiate for the contract for the professional services with qualified parties to provide services needed by the board. The negotiating committee shall consider all proposals by parties applying to perform such contract and award the contract to the best qualified party.

(c) Contracts entered into under this section shall not be subject to the provisions of K.S.A. 75-3739 or 75-37,102, and amendments thereto.

Sec. 5. On July 1, 2009, K.S.A. 66-1802 is hereby amended to read as follows: 66-1802. As used in this act:

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

(b) "Emergency" means any condition constituting a clear and present danger to life, health or property, or a customer service outage.

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

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

(e) "Facility" means any *sanitary sewer* or underground line, system or structure used for *transporting, gathering, storing, conveying, transmitting or distributing potable water, gas, electricity, communication, crude oil, refined or processed petroleum, petroleum products or hazardous liquids*; facility shall not include, any *stormwater sewers* or production petroleum lead lines, salt water disposal lines or injection lines, which are not located on platted land or inside the corporate limits of any city.

(f) "Locatable facility" means facilities for which the tolerance zone can be determined by the operator using generally accepted practices such as as-built construction drawings, system maps, probes, locator devices or any other type of proven technology for locating.

(g) "Marking" means the use of stakes, paint, flags or other clearly identifiable materials to show the field location of underground facilities, in accordance with the rules and regulations promulgated by the state corporation commission in the administration and enforcement of this act.

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

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

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

(k) "Preengineered project" means a public project or a project which is approved by a public agency wherein the public agency responsible for

the project, as part of its engineering and contract procedures, holds a meeting prior to the commencement of any construction work on such project in which all persons, determined by the public agency to have underground facilities located within the construction area of the project, are invited to attend and given an opportunity to verify or inform the public agency of the location of their underground facilities, if any, within the construction area and where the location of all known and underground facilities are duly located or noted on the engineering drawing as specifications for the project.

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

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

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

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

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

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

(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 section 5 through section 10, and amendments thereto.

(p)(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 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 use a tolerance zone for such water or wastewater facility in which tolerance zone means the area 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.

(q)(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.

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

(s)(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.

Sec. 6. On July 1, 2009, K.S.A. 66-1804 is hereby amended to read as follows: 66-1804. (a) Except in the case of an emergency, an excavator shall serve notice of intent of excavation at least two full working days, but not more than 15 calendar days before the scheduled excavation start date, on each operator having underground tier 1 facilities located in the proposed area of excavation.

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

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

(e)(d) No person shall make repeated requests for remarking unless

the request is due to circumstances not reasonably within the control of such person.

(d)(e) The notice of intent of excavation shall contain the name, address and telephone number of the person filing the notice of intent, the name of the excavator, the date the excavation activity is to commence and the type of excavation being planned. The notice shall also contain the specific location of the excavation.

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

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

Sec. 7. On July 1, 2009, K.S.A. 66-1805 is hereby amended to read as follows: 66-1805 (a) This act recognizes the establishment of a single notification center for the state of Kansas. ~~The notification center shall provide prompt notice to each affected member of any proposed excavation.~~ Each operator who has an underground facility shall become a member of the notification center.

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

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

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

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

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

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

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

(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.

Sec. 8. On July 1, 2009, K.S.A. 66-1806 is hereby amended to read

as follows: 66-1806. (a) Within two working days, beginning on the later of the first working day after the excavator has filed notice of intent to excavate or the first day after the excavator has whitenlined the excavation site, an operator served with notice, unless otherwise agreed between the parties, shall inform the excavator of the tolerance zone of the underground facilities of the operator in the area of the planned excavation by marking, flagging or other acceptable method.

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

(c) The operator of tier 2 facilities shall not be required to provide notification of the tolerance zone for facilities which are at a depth at least two feet deeper than the excavator plans to excavate but does have to notify the excavator of their existence.

(b) (d) If the operator of a tier 1 facility has no underground facilities in the area of the proposed excavation, such operator, before the excavation start date, shall notify the excavator that it has no facilities in the area of proposed excavation by telephone, facsimile, marking the area all clear or by other technology that may be developed for such purposes.

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

(d) (f) If the excavator has provided notice to an operator pursuant to K.S.A. 66-1804, and amendments thereto, and the operator fails to comply with subsections (a), (b) or (c) or notifies the excavator that it has no underground facilities in the area of the planned excavation, fails to respond or improperly marks the tolerance zone for the facilities, the excavator may proceed and shall not be liable to the operator for any direct or indirect damages resulting from contact with the operator's facilities, except that nothing in this act shall be construed to hold any excavator harmless from liability to the operator in those cases of gross negligence or willful and wanton conduct.

(e) (g) For economic damages in any civil court of this state, failure of an operator to inform the excavator within two working days of the tolerance zone of the underground facilities of the operator in the manner required by subsection (a) of K.S.A. 66-1806, and amendments thereto, shall not give rise to a cause of action on the part of the excavator against an operator, except that nothing in this act shall be construed to hold any operator harmless from liability in those cases of inaccurate marking of the tolerance zone, gross negligence or willful and wanton conduct. Such

7-5

TUMH / KORA



failure may subject an operator to civil penalties as determined by the state corporation commission.

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

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

(j) All tier 2 facilities installed by an operator after July 1, 2008, shall be locatable.

New Sec. 9. (a) All tier 2 facilities installed by an operator after July 1, 2008, shall be locatable.

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

Sec. 10. On July 1, 2009, K.S.A. 66-1802, 66-1804, 66-1805 and 66-1806 are hereby repealed.

Sec. 11. K.S.A. 66-2006 and 66-2009 and K.S.A. 2007 Supp. 66-2005 are hereby repealed.

Sec. 12. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 24, 2008.

CHAPTER 123

SENATE BILL No. 449

AN ACT amending the uniform commercial code; relating to secured transactions; amending K.S.A. 2007 Supp. 84-9-521 and 84-9-526 and repealing the existing sections.

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

Section 1. K.S.A. 2007 Supp. 84-9-521 is hereby amended to read as follows: 84-9-521. (a) Initial financing statement form. A filing office that accepts written records may not refuse to accept a written initial financing statement in the following form and format offered on a form prescribed by the secretary of state except for a reason set forth in K.S.A. 2007 Supp. 84-9-516(b) and amendments thereto:

7-6

**UCC FINANCING STATEMENT**  
 FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME

OR

1b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

1c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

1d. TAX ID #: SSN OR EIN ADDL INFO RE ORGANIZATION DEBTOR 1e. TYPE OF ORGANIZATION 1f. JURISDICTION OF ORGANIZATION 1g. ORGANIZATIONAL ID #, if any

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

2c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

2d. TAX ID #: SSN OR EIN ADDL INFO RE ORGANIZATION DEBTOR 2e. TYPE OF ORGANIZATION 2f. JURISDICTION OF ORGANIZATION 2g. ORGANIZATIONAL ID #, if any

3. SECURED PARTY'S NAME (or NAME OF TOTAL ASSIGNEE OF ASSIGNOR (S)?) - Insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME

OR

3b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

3c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

4. THIS FINANCING STATEMENT covers the following collateral:

5. ALTERNATIVE DESIGNATION (if applicable): LESSEE/LESSOR CONSIGNEE/CONSIGNOR BAILEE/BAILOR SELLER/BUYER AD. LIEN NON-UCC FILING

6. THIS FINANCING STATEMENT is to be used for records (or recorded) in the REAL ESTATE RECORDS. Attach Assignment of Security Interest (if applicable) to this form. 7. Check to RETURN SEARCH REPORT (S) on Debtor(S) (optional)

8. OPTIONAL FILER REFERENCE DATA: E. REGISTRATION F. ADDITIONAL FEE G. FILING OFFICE H. ALL Debtors Debtor 1 Debtor 2

NATIONAL UCC FINANCING STATEMENT (FORM UCC1) (REV. 07/29/98)

Water District No. 1 of Johnson County

**To: Members of the House Energy and Utilities Committee**

**From: Darci Meese, Government Affairs Coordinator  
Water District No. 1 Johnson County (WaterOne)**

**Date: January 28<sup>th</sup>, 2010**

**RE: Testimony in Opposition to Senate Substitute Bill 58**

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On behalf of WaterOne, I am here today to testify in opposition to Senate Substitute Bill 58 (SB 58), amendments to the Kansas Underground Utility Damage Prevention Act.

After 10 years of attempts to bring water and wastewater into Kansas One Call and a long negotiation in the 2008 Legislative Session, water and wastewater facilities have been operating as Tiered members of One Call for almost 7 months now. House Bill 2637 was the product of those negotiations and it became law, going into effect on July 1, 2009. During the 2009 Session, SB 58 was originally proposed as a simple "technical" clean-up bill. What was actually presented to Senate Utilities in SB 58 was a wholesale change from the compromise originally reached the year before. It is bad public policy to continually revisit issues like this that have been resolved through arms-length compromise.

WaterOne is operating as a Tier 3 member of One Call. There are essentially only two differences in the service provided now and the service that was provided to our customers before. The first difference is we now pay an annual fee to Kansas One Call in order to continue to perform a service that we were already providing for no fee. The second is we are receiving a huge percentage of calls, likely residential, that are unnecessary and increase our administrative burden.

Senate Sub Bill 58 is a proposal to now increase the fee paid to Kansas One Call for a service that is not wanted or needed. No doubt the annual fee will continue to increase and fall upon utility customers. We respectfully request rejection of Senate Substitute Bill 58. **The last thing the Kansas Legislature should do during this struggling economy is increase costs to consumers through what is ultimately a tax merely disguised as a fee.**

Darci Meese, Government Affairs Coordinator  
Water District No. 1 of Johnson County, Kansas  
913-895-5516 direct  
913-579-9817 cell [dmeese@waterone.org](mailto:dmeese@waterone.org)

HOUSE ENERGY AND UTILITIES

DATE: 1/28/2010

ATTACHMENT 8



P.O. Box 226 • Seneca, KS 66538 • 785/336-3760  
FAX 785/336-2751 • <http://www.krwa.net>

**Comments on Senate Bill 58  
Before the House Energy and Utilities Committee  
January 28, 2010**

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 480 cities and 275 rural water districts and 12 public wholesale districts.

Following many years of attempts to require water and wastewater systems to be members of Kansas One Call, late in the 2008 Session the Association supported HB 2637 which amended an existing statute to include water and wastewater systems and further defined responsibilities and charges to those levels of membership. The statute, K.S.A. 66-1802, went into effect on July 1, 2009.

The Association has worked to inform its member and non-member public water supply and wastewater utilities of the responsibilities to comply with the provisions of HB 2637. Such efforts include publication of the regulations and also presentations at various training seminars. Maps of each of the 295 rural water districts in the state are available through our Web site. There is also online directory that provides numerous contacts for each utility. The maps are available for viewing or download at no charge. Also, a significant shortcoming with many small cities and rural water systems is having adequate mapping. The Association provides a mapping service using GPS technology; we have completed the total mapping of nearly 100 municipal water, wastewater and gas systems and rural water districts. We presently have 52 additional projects in various stages of completion. Upon request, we provide the mapping data in digital format to One Call.

Kansas Rural Water Association supported HB 2637 in 2008 because that bill took into consideration concerns that were expressed by water and wastewater utilities. In 2009, SB 58 was introduced as a technical measure to clarify the "zone of tolerance". We supported that clarification. What we did not and do not support is the balloon amendment to change the Tier structure and remove the transparency issues. Those changes were proposed last year with the absence of any member stakeholder support or discussion.

The Kansas Rural Water Association respectfully suggests that the present SB 58 not be approved. It was originally proposed only as a bill to clean up technical issues verses undoing major changes that were agreed to after negotiations in the 2008 Session on HB 2637.

Respectfully,

Elmer Ronnebaum  
General Manager  
Kansas Rural Water Association

HOUSE ENERGY AND UTILITIES  
DATE: 1/28/2010  
ATTACHMENT 9



January 28, 2010

To: Senate Committee on Utilities  
From: David Cox, Utilities Engineering Manager  
Subject: Opposition to Senate Bill 58

The City of Olathe works very hard to ensure water and sewer services are as affordable as possible for customers. We recognize this is a cost that must be born by all residents, and we are proud to have very reasonable rates.

Avoiding the costs of repairing damaged sewers caused by digging is important as it could impact customers. However, one-call mandates proposed in SB 58 will not result in fewer damages but unnecessary rate increases for our customers through yet another UNFUNDED MANDATE.

This proposed mandate will result in the equivalent of a 1% to 2% rate increase in 2014 for residents with nothing in return. The additional revenue needed will not be used to fund either the state's budget shortfall, or help cities fund backlogged projects or enhance service needs of its residences. It will go toward expanding a program in an area that is not needed and will provide no benefit to contractors, the City and more importantly, the taxpayers of Olathe.

Olathe continues to be one of America's fastest growing cities, and we experience a great deal of construction. However, problems with damage to city water and sewer utilities from digging are minimal. In most cases, the city has found that damage to our utilities by excavators was not from failure to locate, nor the excavator not knowing the presence of the utility.

Based on that fact, one call mandates would have made no difference in Olathe other than forcing customers to pay more and increasing the bureaucracy in both Topeka and in the City of Olathe.

Beginning in July 2009, the City became a tier 3 city in the Kansas One Call system. As such, the contractors/excavators directly contact the City to determine if locates are necessary. Our service also includes a web based access with a process to help the excavator determine whether or not the excavation requires marking. This is a simple, but effective process with minimal costs.

*HOUSE ENERGY AND UTILITIES*

DATE: 1/28/2010

ATTACHMENT 10-1

Other important information includes:

- An estimated 50% of the Kansas One Call requests for locates are for locates in the back yard or for hand excavation, neither of which are going to damage water and or sewer facilities. The city would be charged Kansas One Call fees for all of these requests. The city's Public Works Department, which is required to participate in Kansas One Call for areas of the city that have street lights and traffic signals, reports that over two thirds of their locate requests forwarded by One Call are not applicable and no marking is completed.
- Waterlines are constructed of ductile iron pipe materials that are not easily damaged by property owners digging in their yards and are buried 3.5 feet deep, which is deeper than property owners are digging to plant a tree, till a garden or erect a fence. Sewer lines are typically 8+ feet deep and are in a straight line between visible manholes. And, water and sewer utility lines do not present near the safety hazard as electrical utilities.
- Senate Bill 58 will create an unnecessary burden of over \$300,000 to our customers and require the addition of 2 to 3 new employees with no benefit to the customer.
- About 80% of City water and sewer lines rest within the public right of way. A work in the right-of-way permit is already required for excavation, so adding the One Call requirement will make no difference for excavating companies performing work. However, it will add an unnecessary and expensive step for the City and our rate payers.

The City of Olathe does not oppose mandatory marking requirements for water and sewer utilities but strongly opposes this unfunded mandate. It will increase costs to ratepayers, add bureaucracy and have little to no return for customers. During a budget crisis, unnecessarily raising costs for residents is not the right direction to take.