

HOUSE BILL No. 2456

By Committee on Energy and Utilities

1-17

1 AN ACT concerning the underground utility damage prevention act;
2 relating to appointment of members; amending K.S.A. 2011 Supp. 66-
3 1805 and repealing the existing section.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2011 Supp. 66-1805 is hereby amended to read as
7 follows: 66-1805. (a) This act recognizes the establishment of a single
8 notification center for the state of Kansas. Each operator who has an
9 underground facility shall become a member of the notification center.

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

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

19 (d) Notification to operators as defined in subsection (b) shall be
20 given by notifying the notification center by telephone at the toll free
21 number or by other communication methods approved by the notification
22 center. The content of such notification shall be as required by K.S.A. 66-
23 1804, and amendments thereto.

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

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

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

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

36 (i) The notification center shall charge and collect an annual

1 membership fee in the amount of \$25 from each tier 2 facility member.

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

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

8 (l) The notification center established pursuant to this section shall be
9 and is hereby deemed to be a public agency and shall be subject to the
10 provisions of the open records act, K.S.A. 45-215 *et seq.*, and amendments
11 thereto, and the open meetings act, K.S.A. 75-4317 *et seq.*, and
12 amendments thereto, except that the notification center or board of
13 directors, or successor managing organization shall not disseminate, make
14 available or otherwise distribute data or information provided by an
15 operator of a tier 1, 2 or 3 facility unless such dissemination, making
16 available or distributing is necessary for the state corporation commission
17 or the notification center to carry out legal duties or specific statutory
18 duties prescribed under this chapter.

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

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

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

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

37 (q) *Notwithstanding any contrary provisions of subsection (a) of*
38 *K.S.A. 17-6501 and subsections (c) and (d) of K.S.A. 17-6502, and*
39 *amendments thereto, for any corporation which has as one of its purposes*
40 *the operation of a notification center as provided in this act, no proxy may*
41 *be appointed by or for a member of such corporation due to inaction,*
42 *failure to respond to a proxy solicitation, adoptive admission, failure to*
43 *attend a meeting or failure to appoint their own proxy for a meeting of*

1 *members. In order for a member to lawfully appoint a proxy of such*
2 *corporation, the member must appoint the proxy by actual and direct*
3 *appointment, pursuant to subsections (c) or (d) of K.S.A. 17-6502, and*
4 *amendments thereto, as evidenced by the member's signature or other*
5 *appropriate affirmation. A proxy not directly appointed by a member in*
6 *this manner or who cannot evidence such member's direct appointment*
7 *shall not be allowed to vote on any matter that comes before the meeting*
8 *of members of such corporation.*

9 Sec. 2. K.S.A. 2011 Supp. 66-1805 is hereby repealed.

10 Sec. 3. This act shall take effect and be in force from and after its
11 publication in the statute book.

12