HOUSE BILL No. 2178

By Committee on Judiciary

AN ACT concerning utilities; relating to the Kansas underground utility damage prevention act; definitions; location of facilities and duty to mark, exceptions; amending K.S.A. 66-1802 and 66-1806 and repealing the existing sections.

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

Section 1. 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: "Operator" does not mean any person who is:

(1) 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; or

(2) providing electric service for that portion of an underground facility downstream of the point where ownership of the facility changes from the operator to another person as determined by the operator's rules and regulation, tariffs, service or membership agreement or other similar documents.

(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 K.S.A. 66-1805 through 66-1810 66-1801 et
seq., and amendments thereto.
(s) "Tolerance zone" means the area 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. 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. 66-1815, and amendments thereto.

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

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

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

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

(d) (1) 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.

(2) If the operator of a tier 1 facility is a provider of electricity, the
duty to mark shall not extend downstream of the point where ownership of
the facility changes from the operator to another person as determined by
the operator’s rules and regulations, tariffs, service or membership
agreements or other similar documents.

(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. 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.

Sec. 3. K.S.A. 66-1802 and 66-1806 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its
publication in the Kansas register.